

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 08/09/2013

Department of Commerce
National Oceanic and Atmospheric Administration

FOR CERTIFYING OFFICIAL: Simon Szykman

FOR CLEARANCE OFFICER: Jennifer Jessup

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 08/09/2013

ACTION REQUESTED: Revision of a currently approved collection

TYPE OF REVIEW REQUESTED: Regular

ICR REFERENCE NUMBER: 201308-0648-003

AGENCY ICR TRACKING NUMBER:

TITLE: NMFS Alaska Region Vessel Monitoring System (VMS) Program

LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change

OMB CONTROL NUMBER: 0648-0445

The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 01/31/2015

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	44	3,721	733,574
New	48	3,745	740,145
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	4	24	6,571
Change due to Agency Adjustment	0	0	0
Change due to PRA Violation	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official: Dominic J. Mancini
Acting Deputy Administrator,
Office Of Information And Regulatory Affairs

List of ICs

IC Title	Form No.	Form Name	CFR Citation
VMS check-in report, plus time and costs for installation and maintenance	NA	VMS FAX	

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

<p>1. Agency/Subagency originating request</p>	<p>2. OMB control number b. <input type="checkbox"/> None a. _____ - _____</p>
<p>3. Type of information collection (<i>check one</i>)</p> <p>a. <input type="checkbox"/> New Collection</p> <p>b. <input type="checkbox"/> Revision of a currently approved collection</p> <p>c. <input type="checkbox"/> Extension of a currently approved collection</p> <p>d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired</p> <p>e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired</p> <p>f. <input type="checkbox"/> Existing collection in use without an OMB control number</p> <p>For b-f, note Item A2 of Supporting Statement instructions</p>	<p>4. Type of review requested (<i>check one</i>)</p> <p>a. <input type="checkbox"/> Regular submission</p> <p>b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____</p> <p>c. <input type="checkbox"/> Delegated</p>
	<p>5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
	<p>6. Requested expiration date</p> <p>a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____</p>
<p>7. Title</p>	
<p>8. Agency form number(s) (<i>if applicable</i>)</p>	
<p>9. Keywords</p>	
<p>10. Abstract</p>	
<p>11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>)</p> <p>a. <input type="checkbox"/> Individuals or households d. <input type="checkbox"/> Farms</p> <p>b. <input type="checkbox"/> Business or other for-profit e. <input type="checkbox"/> Federal Government</p> <p>c. <input type="checkbox"/> Not-for-profit institutions f. <input type="checkbox"/> State, Local or Tribal Government</p>	<p>12. Obligation to respond (<i>check one</i>)</p> <p>a. <input type="checkbox"/> Voluntary</p> <p>b. <input type="checkbox"/> Required to obtain or retain benefits</p> <p>c. <input type="checkbox"/> Mandatory</p>
<p>13. Annual recordkeeping and reporting burden</p> <p>a. Number of respondents _____</p> <p>b. Total annual responses _____</p> <p> 1. Percentage of these responses collected electronically _____ %</p> <p>c. Total annual hours requested _____</p> <p>d. Current OMB inventory _____</p> <p>e. Difference _____</p> <p>f. Explanation of difference</p> <p> 1. Program change _____</p> <p> 2. Adjustment _____</p>	<p>14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>)</p> <p>a. Total annualized capital/startup costs _____</p> <p>b. Total annual costs (O&M) _____</p> <p>c. Total annualized cost requested _____</p> <p>d. Current OMB inventory _____</p> <p>e. Difference _____</p> <p>f. Explanation of difference</p> <p> 1. Program change _____</p> <p> 2. Adjustment _____</p>
<p>15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>)</p> <p>a. <input type="checkbox"/> Application for benefits e. <input type="checkbox"/> Program planning or management</p> <p>b. <input type="checkbox"/> Program evaluation f. <input type="checkbox"/> Research</p> <p>c. <input type="checkbox"/> General purpose statistics g. <input type="checkbox"/> Regulatory or compliance</p> <p>d. <input type="checkbox"/> Audit</p>	<p>16. Frequency of recordkeeping or reporting (<i>check all that apply</i>)</p> <p>a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure</p> <p>c. <input type="checkbox"/> Reporting</p> <p> 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly</p> <p> 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually</p> <p> 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____</p>
<p>17. Statistical methods</p> <p>Does this information collection employ statistical methods</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>18. Agency Contact (person who can best answer questions regarding the content of this submission)</p> <p>Name: _____</p> <p>Phone: _____</p>

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT
NMFS ALASKA REGION
VESSEL MONITORING SYSTEM (VMS) PROGRAM
OMB CONTROL NO. 0648-0445**

INTRODUCTION

This is a resubmission with the final rule, of a request for revision of an existing collection due to proposed rule RIN 0648-AY53. There were no changes based on comments on the proposed rule.

National Marine Fisheries Service (NMFS), Alaska Region manages the groundfish fisheries in the exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands Management Area (BSAI) and Gulf of Alaska (GOA) under fishery management plans (FMPs) for groundfish in the respective areas. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMPs under the authority of the [Magnuson-Stevens Fishery Conservation and Management Act](#), 16 U.S.C. 1801 *et seq.* The [Northern Pacific Halibut Act of 1982](#) (Halibut Act) at 16 U.S.C. 773–773k provides the Secretary of Commerce with the authority and general responsibility to carry out the requirements of the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953. Commercial halibut fisheries operate within the Individual Fishing Quota (IFQ) Program, Western Alaska Community Development Quota (CDQ) Program, and through area-specific catch sharing plans. Regulations implementing the FMPs appear at [50 CFR part 679](#).

VMS units integrate global positioning system and communications electronics in a single, tamper-resistant package to automatically determine the vessel's position several times per hour. The units can be set to transmit a vessel's location periodically and automatically to an overhead satellite in real time. In most cases, the vessel owner is unaware of exactly when the unit is transmitting and is unable to alter the signal or the time of transmission. The VMS unit is passive and automatic, requiring no reporting effort by the vessel operator. A communications service provider receives the transmission and relays it to NOAA Fisheries Office of Law Enforcement (OLE) and U.S. Coast Guard (USCG).

Traditional methods of monitoring compliance with fishing regulations do not fully meet NMFS's need to monitor fishing activities under protection measures. The VMS is generally acknowledged to be an essential component of monitoring and management for complicated, geographically widespread fishing closures. The VMS allows verification of where fishing is taking place in real time. This, in turn, allows verification that vessels fishing in an area are permitted to fish in that area. Much can be inferred about whether a vessel is actively fishing, and the type of gear being used, when a VMS track is examined by an analyst knowledgeable about the vessel, and the fisheries that are open when the track is observed. This information can be useful for targeting vessels for more detailed observation.

The VMS also ensures that harvested fish are properly debited or reported, because NMFS can track vessels as they arrive in port to offload the product.

A. JUSTIFICATION

1. Explain the circumstances that make the collection-of-information necessary.

GOA Parallel Fisheries

During the Federal Pacific cod total allowable catch (TAC) fisheries, the State creates a parallel Pacific cod fishing season by generally adopting NMFS management actions in State waters; however, trawl gear is generally not allowed within State waters of the GOA. The State has management authority for groundfish resources within State waters, and the Commissioner of the Alaska Department of Fish and Game (ADF&G) opens parallel fisheries through emergency order under the Parallel Groundfish Fishery Emergency Order Authority at 5 AAC 28.086. These emergency orders establish parallel fishing seasons that allow vessels to fish for groundfish, including Pacific cod, within State waters with the same season as the Federal seasons. In addition, the Commissioner is authorized to open or close the fisheries under emergency order to adapt to unanticipated openings or closures of the Federal fisheries.

Currently, there are no limits on entry into the parallel waters groundfish fisheries, and no limits on the proportion of the GOA Pacific cod TAC that may be harvested in parallel waters. There is concern that participation in the GOA Pacific cod parallel waters fishery by vessels that do not hold License Limitation Program (LLP) licenses may increase. The Council, in consideration of options and recommendations for the parallel fishery, will balance the objectives of providing stability to the long term participants in the sectors, while recognizing that new entrants who do not hold Federal permits or licenses may participate in the parallel fishery.

GOA State Waters Fisheries

In 1997, the ADF&G began managing Pacific cod fisheries inside of 3 nm (referred to as the State waters fisheries or State Guideline Harvest Limit (GHL) fisheries) that are generally open when the Federal and parallel fisheries are closed. The State waters Pacific cod seasons are managed under five Pacific cod management plans under the authority of State regulation. The State waters fisheries close when the GHL is harvested, or when the Commissioner closes the fishery under emergency order, on December 31, or whichever occurs later. Closing of the State waters fisheries typically occurs by August 31 to coincide with the opening of the B season parallel/Federal fishing season.

Many participants in the State waters Pacific cod fisheries also participate in the parallel/Federal Pacific cod fisheries. During 1997 through 2008, an average of 75 percent of Central GOA State waters pot catch and 93 percent of Western GOA State waters pot catch was harvested by vessels that also participated in the GOA Pacific cod parallel/Federal fishery (using any gear type) in a particular year.

GOA Federal Waters Fisheries

Per the Council's Problem Statement: The limited access derby-style management of the Western GOA and Central GOA Pacific cod fisheries has led to competition among the various gear types (trawl, hook-and-line, pot and jig) and operation types (catcher/processor and catcher vessel) for shares of the TAC. Competition for the GOA Pacific cod resource has increased for a variety of reasons. These reasons include increased market value of cod products, rationalization of other fisheries in the Bering Sea and Aleutian Islands Management Area (BSAI) and GOA, increased participation by fishermen displaced from other fisheries, reduced Federal TACs due to the State waters cod fishery, and Steller sea lion mitigation measures. The competition among sectors in the fishery may contribute to higher rates of bycatch, discards, and out-of-season incidental catch of Pacific cod.

Participants in the fisheries who have made long-term investments and are dependent on the fisheries face uncertainty as a result of the competition for catch shares among sectors. To reduce uncertainty and contribute to stability across the sectors, and to promote sustainable fishing practices and facilitate management measures, the Western and Central GOA Pacific cod TACs should be divided among the sectors. Allocations to each sector would be based primarily on qualifying catch history, but may be adjusted to address conservation, catch monitoring, and social objectives, including considerations for small boat sectors and coastal communities.

The operators of harvesting vessels that possess a Federal Fisheries Permit (FFP) and that are participating in a pollock or Pacific cod fishery in the GOA are required to have onboard a transmitting vessel monitoring system (VMS), as described at § 679.28(f)(6). A VMS consists of a NMFS-approved transmitter that automatically determines a vessel's position and transmits that information to NMFS. While Pacific cod directed fisheries are open, all harvesting vessels with an FFP endorsed with a hook and line, pot, or trawl Pacific cod endorsement are required to have an operational VMS, regardless of where the vessel is fishing at the time or what the vessel is targeting. Thus, a VMS is required of all vessels with an FFP endorsed with a Pacific cod hook and line, pot, or trawl gear while fishing in the adjacent State waters (0 to 3 nm). However, vessels fishing exclusively in State waters are not required to be designated on an FFP, and the operator of such a vessel is not subject to NMFS observer, VMS, or recordkeeping and reporting requirements unless specified by the State.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

The VMS vessel location reports are used to facilitate enforcement of area closures in certain fisheries and to check the accuracy of vessel position information reported by the vessel operator in the daily logbooks. The VMS reports not only provide real-time vessel location and activity information, but also can be used by NMFS to help ascertain the effects of fishing on threatened and endangered species of certain fisheries.

a. VMS operation

Prior to participation in a fishery that requires VMS, a vessel owner must purchase a NMFS-approved VMS transmitter and install it or have it installed onboard the vessel. Installation time for a VMS unit is estimated to be less than two hours. A higher installation estimate of 6 hours/vessel is used, based on a worst-case scenario, e.g. in which a suitable electrical hookup is not convenient to a location where the VMS unit can be installed.

The VMS transmitter must be available for inspection by NMFS personnel, observers, or authorized officers. The vessel owner must ensure that the VMS transmitter is not tampered with, disabled, destroyed, or operated improperly; and must pay all charges levied by the communication service provider.

OLE developed national standards for VMS transmitters, base stations and communication service providers. These standards ensure that a vessel purchasing a unit for use in one region of the United States will not have to purchase a different unit to fish in another region. The approved VMS units are: Argos MAR-GE, Thrane & Thrane 3022-D, 3026-S, 3026-M, and Orbcomm. Refer to OLE's VMS website at http://www.nmfs.noaa.gov/ole/ak_faqs.html.

Regulations at 50 CFR part 679.28 require that the VMS be operational. VMS equipment failure may interfere with normal vessel operations until repairs can be made, and this may impose additional costs. If the VMS unit is not working, the vessel operator must contact OLE who will assist in troubleshooting the system to get it operational again. OLE treats equipment breakdowns on a case-by-case basis and tries to avoid interrupting a fishing trip already in progress.

NMFS estimates that a single non-AFA mothership and up to three stationary floating processors would participate in this program. NMFS will require the owner of a mothership or stationary floating processor – to become permitted as a Community Quota Entity (CQE) floating processor (see OMB Control No. 0648-0545) and then to purchase and operate VMS equipment if the vessel operates within the municipal boundaries of a CQE in the Gulf of Alaska (GOA).

Depending on which brand of VMS is chosen, NMFS estimates that this requirement would impose a cost of up to \$2,000 per vessel for equipment purchase, \$780 for installation and maintenance, and \$5 per day for data transmission costs.

Vessel owners purchasing a VMS unit in order to comply with new Federal regulations could be eligible for a reimbursement of the initial purchase cost of the VMS unit pending approval of funding for this purpose by the NOAA Fisheries Office for Law Enforcement. The VMS reimbursement funds typically cover the costs of purchase and freight, but not the costs of sales taxes, installation, annual operating expenses, or replacement. However, we are asking approval for all costs at this time, as the availability of funds is not certain.

In this supporting statement, VMS transmissions are not counted as burden, because they are automatic. The number of VMS transmissions per day is 48.

VMS operation, Respondent	
Number of VMS respondents CQE floating processors = 4	4
Total VMS transmissions (not counted as responses) VMS = 48 transmissions per fishing day Pacific cod estimated 180 fishing days per vessel (48 x 4 x 180) = 34,560	34,560
Total Responses	
Installation	4
Maintenance	4
Total burden	
There is no burden for VMS transmissions	24
VMS installation time for each NEW VMS (6 hr one time) x 4 vessels to replace VMS unit or add a new VMS = 24/3 year = 8 hr	
VMS maintenance time (4 hr/yr x 4 vessels = 16 hr)	
Total personnel cost @ \$25/hr	\$600
Total miscellaneous cost	\$6,547
Annualized purchase cost (\$2,000/3) x 4	\$2,667
Annual VMS transmission cost @ \$5/day Pacific cod (4 x 180 x 5 = 3,600) Annual maintenance (\$70 x 4 = 280)	\$3,880

VMS data are monitored and interpreted by OLE. Currently, no officers are directly dedicated to VMS; however, a program manager, information technology technician, and enforcement technician work on VMS each day for some hours.

VMS operation, Federal Government	
Total responses	4
Total burden hours (3 personnel x 3 hr = 9 hr) 9 hr x 180 days = 1620 hr	1,620
Total personnel cost (1620 hr x \$35/hr)	\$56,700
Total miscellaneous costs	\$0

b. VMS check-in report

Upon completion of purchase and installation of a VMS unit, the participant must register the VMS unit with an approved service provider. At least 72 hours before participation in a fishery that requires VMS, the participant must send a one-time VMS check-in report to OLE. This check-in report is required only once to obtain the signature of the VMS unit. The information on this report enables OLE to verify that the VMS system is functioning and that VMS data can be identified as a specific vessel. The VMS check-in report may be filled out on the screen, printed, and faxed to (907) 586-7703.

VMS Check-in Report

- Date
- VMS transmitter ID or serial number
- Vessel name
- USCG documentation number
- Federal Fisheries permit number or Federal crab vessel permit number

Name and telephone number of contact person

VMS check-in report, Respondent	
Number of respondents	4
Total responses	4
Frequency = 1	
Total burden hours (48 minutes)	1
Hours per response = 12 min	
Total personnel cost (\$25 x 1)	\$25
Total miscellaneous costs (24.20)	\$24
Fax \$6 x 4 = 24	
Photocopy 0.05 x 4 = 0.2	

VMS check-in report, Federal Government	
Total responses	4
Total burden hours (48 minutes)	1 hr
(12 min x 4)/60	
Total personnel cost (\$25 x 1)	\$25
Total miscellaneous costs	0

It is anticipated that the information collected will be disseminated to the public or used to support publicly disseminated information. As explained in the preceding paragraphs, the information gathered has utility. NOAA Fisheries will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See Question 10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to [Section 515 of Public Law 106-554](#).

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

The VMS collection of information is automated and integrates current information technology in the fishery management and monitoring process.

The VMS check-in report may be completed onscreen using fillable forms, downloaded, and printed from the NMFS Alaska Region website <http://www.alaskafisheries.noaa.gov>. The VMS check-in report must be faxed to: NOAA Fisheries Office for Law Enforcement Fax number: (907) 586-7703.

4. Describe efforts to identify duplication.

No duplication exists with other information collections.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

This collection of information does not impose a significant impact on small entities.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

The VMS is an integral part of the management of the fisheries in the Alaska Region. It would not be possible to carry out the mandates of the Magnuson-Stevens Act and other laws if approval to continue these previously approved collections were to be denied.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

No special circumstances exist.

8. Provide information on the PRA Federal Register Notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

NMFS Alaska Region published a proposed rule (RIN 0648-AY53) coincident with the original submission, requesting comments from the public. There were no comments concerning the information collection requirements of this request.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

No payment or gift to respondents is provided under this program.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

All VMS units include systems to minimize the risk of direct or inadvertent disclosure of vessel position. As stated in the applicable regulations, the information collected, including VMS transmission – but not including information on the VMS check-in report - is confidential under section 402(b) of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*); and also under [NOAA Administrative Order \(AO\) 216-100](#), which sets forth procedures to protect confidentiality of fishery statistics.

All information collected is part of a system of records: NOAA #6: Fishermen's Statistical Data.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

This information collection does not involve information of a sensitive nature.

12. Provide an estimate in hours of the burden of the collection of information.

Total estimated unique respondents: 882, up from 878. Total estimated responses: 48, up from 44. Total estimated burden hours: 3,746, up from 3,721. Total estimated personnel costs: \$93,650, up from \$93,025.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in Question 12 above).

Total estimated miscellaneous costs: \$740,145, up from \$733,574.

\$2,667 in annualized VMS purchase costs.
\$737,478 in operations and maintenance costs.

14. Provide estimates of annualized cost to the Federal government.

Total estimated burden hours: 3,705, up from 2,084. Total estimated personnel costs: \$129,625, up from \$72,900.

15. Explain the reasons for any program changes or adjustments.

Program changes are due to the difference between initiating a new program and maintaining an existing program.

VMS Check-in report

an increase of 4 respondents and responses, 48 instead of 44
an increase of 1 hour, 11 instead of 10
an increase of \$25 personnel costs, \$275 instead of \$250
an increase of \$24 miscellaneous costs, \$288 instead of \$264

VMS Operation (includes purchase, installation, transmission, and maintenance)

an increase of 24 hr burden, 3,735 hr instead of 3,711 hr*
an increase of \$600 personnel costs, \$93,000 instead of \$92,800
an increase of \$6,547 miscellaneous costs, \$739, 857 instead of \$733,310

*Since purchase, installation, transmission and maintenance are not considered responses per se, and only installation and maintenance have burden associated with them, this burden and reporting costs will be included in the Information Collection for “VMS Check-in report and operation” in ROCIS.

16. For collections whose results will be published, outline the plans for tabulation and publication.

NMFS has no plans to publish the results of this information collection.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

In accordance with OMB requirements, the control number and expiration date of OMB approval are shown on the VMS check-in report. The transmission of the VMS data is automatic and electronic, and therefore not possible to display the OMB expiration date. The VMS malfunction notification is an email.

18. Explain each exception to the certification statement.

There are no exceptions to the certification statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.

Please fax this completed form to:
NOAA Fisheries Service
Office for Law Enforcement
VMS Fax number: **907-586-7703**



NOAA
Fisheries Service



VMS Fax

**Note: Please register your VMS unit
with an approved service provider prior to using this fax.**

Date: _____

Vessel Name: _____

Coast Guard Doc. #: _____

Federal Fisheries Permit #: _____

OR

Federal Crab Vessel Permit #: _____

Contact Person: _____

Contact Telephone: _____

Thrane & Thrane Inmarsat IMN: _____

OR

Orbcomm Skymate Serial #: _____

PUBLIC REPORTING BURDEN STATEMENT Public reporting burden for this collection of information is estimated to average 12 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802.

ADDITIONAL INFORMATION Before completing this form please note the following: 1) NMFS cannot conduct or sponsor this information request, and you are not required to respond to this information request, unless the form displays a currently valid OMB control number; 2) This information is mandatory and is required to manage the VMS data collection program for groundfish under 50 CFR part 679 and CR crab fisheries under 50 CFR part 680, and under section 402(a) of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) and 16 U.S.C. 1862(j) ; 3) Federal law and regulations require and authorize NMFS to manage commercial fishing effort; 4) Responses to this information request are not confidential.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 679 and 680

[Docket No.]

RIN 0648-AY53x

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod Allocations in the Gulf of Alaska; Amendment 83

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would implement Amendment 83 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA). If approved, Amendment 83 would allocate the Western and Central GOA Pacific cod total allowable catch (TAC) limits among various gear and operational sectors. Sector allocations would limit the amount of Western and Central GOA Pacific cod that each sector is authorized to harvest. This action would reduce competition among sectors and would support stability in the Pacific cod fishery. This rule would also limit access to the Federal Pacific cod TAC fisheries prosecuted in State waters, commonly known as the parallel fishery, adjacent to the Western and Central GOA. This action is intended to promote community participation and would provide incentives for new entrants in the jig sector. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan, and other applicable laws.

DATES: Written comments must be received no later than 5:00 p.m. Alaska local time (A.l.t.)

[insert date 45 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Send comments to Sally Bibb, Acting Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by “RIN 0648-AY53”, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal at <http://www.regulations.gov>
- Fax: (907) 586-7557, Attn: Ellen Sebastian
- Mail: P. O. Box 21668, Juneau, AK 99802
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. Electronic copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from <http://www.regulations.gov> or from the Alaska Region website at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the

above address, e-mailed to OIRA_Submission@omb.eop.gov, or faxed to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Seanbob Kelly, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone of the Gulf of Alaska (GOA) under the Fishery Management Plan for Groundfish of the GOA (FMP). The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 et seq. Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

The Council has submitted Amendment 83 for review by the Secretary of Commerce (Secretary), and a notice of availability of the FMP amendment was published in the Federal Register on [insert date], with written comments on the FMP amendment invited through [insert date].

Comments may address the FMP amendment, the proposed rule, or both, but must be received by NMFS, not just postmarked or otherwise transmitted, by 5:00 p.m. Alaska local time (A.l.t.) on [insert date 45 days after date of publication in the FEDERAL REGISTER], to be considered in the approval/disapproval decision on the FMP amendment. All comments received by that time, whether specifically directed to the amendment or the proposed rule, will be considered in the decision to approve, partially approve, or disapprove the proposed amendment. Comments received after the comment period for the amendment will not be considered in that decision.

I. GOA Pacific Fishery

A. Background

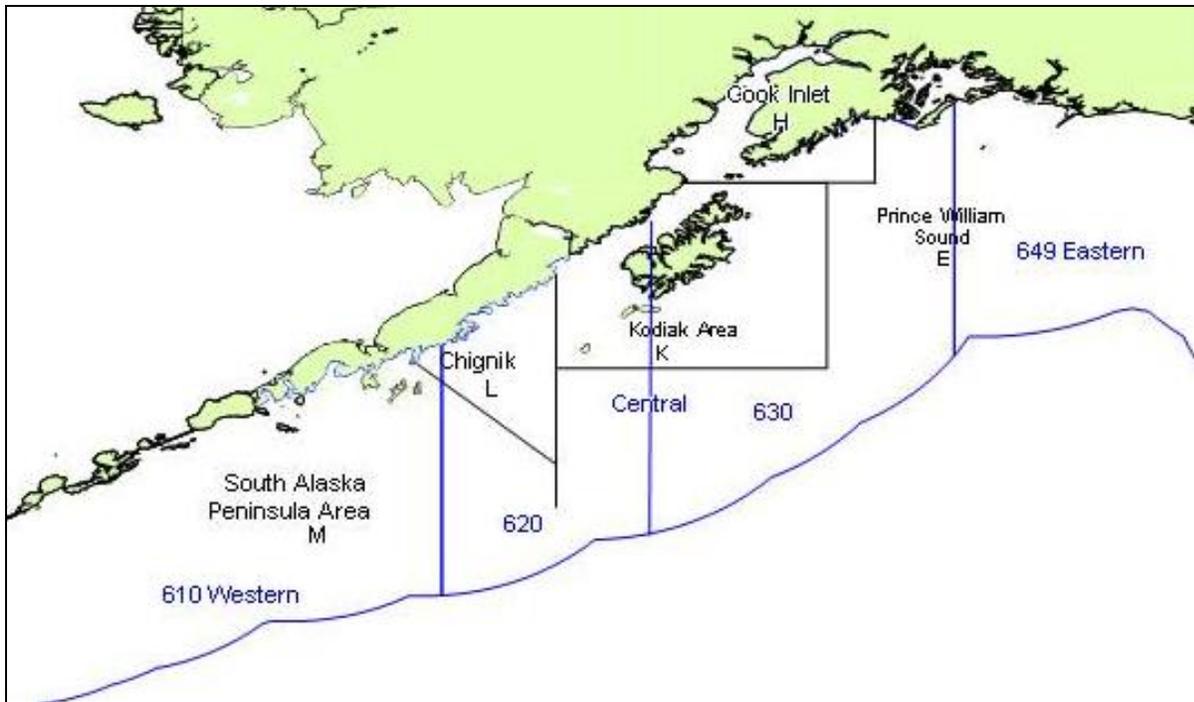
Pacific cod (*Gadus macrocephalus*) is a valuable fish resource in the GOA and is second to walleye pollock (*Theragra chalcogramma*) as the dominant species of the commercial groundfish catch in the GOA. As one of the most valuable fish species in the GOA, Pacific cod

is the primary species targeted by vessels using pot and hook-and-line gear and is an important species for vessels using the trawl gear. Smaller amounts of Pacific cod are taken by vessels using jig gear.

Section 301(a)(1) of the MSA, also known as National Standard 1, states that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the U.S. fishing industry. Each year, the Council recommends harvest specifications to the Secretary. These specifications establish an overfishing level, acceptable biological catch (ABC), and total allowable catch (TAC) for Pacific cod among the Western, Central, and Eastern GOA regulatory areas. The GOA Pacific cod ABC is apportioned between fisheries managed exclusively by the State of Alaska (State) and fisheries managed by NMFS. The State manages a parallel Pacific cod fishery and a Guideline Harvest Level (GHL) fishery in the State waters adjacent to the GOA regulatory areas. (State-managed Pacific cod fisheries are explained in more detail in section II of this preamble.)

The State establishes a GHL for Pacific cod based on a percentage of the ABC for Pacific cod, and this GHL is available for harvest exclusively within State waters. The State GHL Pacific cod fisheries are divided into five separate areas (see Figure 1). The combined State GHL fisheries for Pacific cod are not allowed to harvest more than 25 percent of the combined Western, Central, and Eastern GOA Pacific cod ABCs (76 FR 11111, March 1, 2011).

Figure 1. Map of State GHL Pacific cod management areas (South Alaska Peninsula, Chignik, Kodiak, Cook Inlet, and Prince William Sound) and Federal regulatory areas (Western, Central, and Eastern) in the GOA.



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After accounting for the State GHF fisheries, the remaining ABC in the Central and Western GOA is managed under a Federal TAC limit. The Council recommends each TAC so that total harvests under the State GHF and Federal TAC fisheries are slightly below the ABC to

ensure that the ABC is not exceeded, as displayed below in Table 1. The Council recommends TACs for the Western, Central, and Eastern GOA Pacific cod fisheries with the goal of providing a conservatively managed sustainable yield in each of these three regulatory areas. In each Federal regulatory area, the State GHL portion of the ABC is applicable only to the harvest of Pacific cod in the State waters fisheries while the TAC applies to both the Federal fisheries prosecuted in the EEZ and State-managed parallel fisheries for GOA Pacific cod.

Table 1. The portion of the 2011 ABC that NMFS allocated to the Pacific cod fisheries and processor components by GOA regulatory area. NMFS does not further allocate Pacific cod GHL to State management areas.

Regulatory Area	State GHL Fisheries	TAC fisheries	For processing by the inshore component	For processing by the offshore component
Western GOA	8.75%	26.25%	23.63%	2.62%
Central GOA	15.50%	46.50%	41.85%	4.65%
Eastern GOA	0.75%	2.25%	2.03%	0.22%

While the directed fisheries for Pacific cod in Federal waters (3 nm to 200 nm) are open, directed fisheries for Pacific cod in State waters (0 to 3 nm) are open concurrently. These fisheries in State waters, referred to as the parallel fisheries, are prosecuted under virtually the same rules as the Federal fisheries, with catch accrued against the Federal TAC. State GHL fisheries are typically open when Federal/parallel fisheries are closed and are prosecuted in State waters. Each fishery is described in more detail in section II of this preamble.

B. Current Apportionments in the GOA Pacific Cod TAC Fisheries

Historically, the majority of the GOA Pacific cod TAC has been apportioned to the Central GOA regulatory area, with smaller apportionments made to the Western—and even less to the Eastern—regulatory areas. For example, in 2011 the Council recommended that 62 percent of the GOA TAC be allocated to the Central GOA (40,362 mt), 35 percent to the Western GOA (23,785 mt), and 3 percent to the Eastern GOA (1,953 mt) (76 FR 11111, March

1, 2011). In the Western and Central GOA regulatory areas, 60 percent of the annual TAC is apportioned to the A season for hook-and-line, pot, and jig gear from January 1 through June 10, and for trawl gear from January 20 through June 10; and forty percent of the annual TAC is apportioned to the B season for hook-and-line, pot, and jig gear from September 1 through December 31, and for trawl gear from September 1 through November 1 (§§ 679.20(a)(12) and 679.23(d)(3)). The Eastern GOA has no seasonal apportionments.

All directed fishing allowance and incidental catch of Pacific cod that may occur in other groundfish fisheries that accrues before June 10 are managed such that total harvest in the A season is no more than 60 percent of the annual TAC. This management methodology began in 2001 to meet the intent of the Steller sea lion protection measures (66 FR 7276, January 22, 2001) by temporally dispersing the Pacific cod removals, thereby reducing the likelihood of harvest in the A season exceeding 60 percent of the annual TAC. The GOA Pacific cod A season directed fishery must close by June 10, but NMFS usually closes the season much earlier, when the directed fishing allowance has been harvested. Managers attempt to time the A season closure to leave a sufficient portion of the A season TAC for incidental catch of Pacific cod in other directed fisheries. Any A season overage or incidental catch between the end of the A season (June 10) and the beginning of the B season (September 1) counts towards the B season TAC. The B season ends on November 1 for trawl vessels and on December 31 for non-trawl gear vessels, unless the directed fishing allowance is reached earlier, or specific limits on the amount of Pacific halibut mortality are reached.

The Pacific halibut annual mortality limit is commonly known as the halibut prohibited species catch (PSC) limit. The halibut PSC limit ensures that the groundfish fisheries do not

exceed a maximum amount of halibut mortality in specific groundfish fisheries, including Pacific cod in the GOA.

In the GOA Federal regulatory areas, all incidentally caught Pacific cod must be retained during the directed Pacific cod season. When the directed fishing for Pacific cod is closed, incidentally caught Pacific cod in Federal waters (3 nm to 200 nm off Alaska), can only be retained up to a maximum retainable amount (MRA) established at 20 percent (§ 679.20(e)(1)). The MRA limits the amount of catch for species not open for directed fishing that may be retained to a percentage of those species open for directed fishing. Vessels fishing in the halibut and sablefish individual fishing quota (IFQ) fisheries are required to retain Pacific cod up to the MRA (see § 679.27(c)(2)), unless NMFS has prohibited the retention of this species (see § 679.7(f)(8)(i)(B)).

Pacific cod in the GOA is further apportioned on the basis of processor component (inshore and offshore) and season, as specified at § 679.20(d)(1). Under Amendment 23 to the GOA FMP (57 FR 23321, June 3, 1992), 90 percent of the Western, Central, and Eastern TAC is allocated to vessels catching Pacific cod for processing by the inshore component and 10 percent to vessels catching Pacific cod for processing by the offshore component. The inshore component is composed of three types of processors: (1) shoreside plants, (2) stationary floating processors (SFP), and (3) vessels with catcher/processor (C/P) endorsements less than 125 ft (45.7 m) (45.7 m) in length that process less than 126 mt (round weight) per week of inshore pollock and Pacific cod, combined. The owners and operators of SFPs and C/Ps less than 125 feet, including mothership vessels less than 125 ft (45.7 m) (45.7 m) with C/P endorsements, can elect to participate in the inshore component of the fishery on an annual basis. Similarly, C/P's and motherships less than 125 ft (45.7 m) may choose to participate in the offshore component.

Motherships are vessels that receive and process catch from other vessels. Motherships may be vessels that only process catch received from other vessels, or they may also operate as C/Ps. The offshore component includes all vessels that process groundfish harvested in the GOA and that are not included in the inshore component. For example, all motherships, including those less than 125 ft (45.7 m), not endorsed as a C/P are ineligible for an inshore processing endorsement on their Federal fishing permit and are, by default, part of the offshore component.

C. Current Harvest in the GOA Pacific Cod Fishery

During some recent years, the annual GOA Pacific cod TACs allocated to the offshore sector have not been fully harvested. Inshore TACs typically have been fully harvested in the Central GOA. Harvests in the Western GOA have increased in recent years from only 68 percent of the inshore TACs harvested in 2006, to 99 percent and 101 percent of the inshore TAC harvested in 2009 and 2010, respectively. Similarly, the Eastern GOA regulatory area experienced recent increases in harvest from 13 percent in 2008 to 50 percent in 2010. Beginning in 2004, a substantial proportion of the offshore TACs in each regulatory area has not been harvested. Inseason management has opened the offshore TACs concurrently with the inshore TACs, but has closed the offshore TACs when the Bering Sea and Aleutian Islands Management Area (BSAI) Pacific cod A season fisheries ended to prevent overharvest of the A season TAC by the BSAI C/P fleet. In 2003, the Western GOA offshore A season was open to the BSAI C/P fleet, and the Western GOA offshore A season TAC was overharvested (220 percent). As a result, the 2003 Western GOA offshore B season was not opened.

The following summary of Pacific cod harvests in the GOA, by sector, combines harvest data from State and Federal waters. Vessels using trawl gear harvested the largest share of the catch in every year from 1991 through 2002, except in 2000. Trawl landings of Pacific cod

peaked in 1990 and 1991, at nearly 60,000 mt per year, and declined to less than 20,000 mt in recent years. Since 1990, hook-and-line harvests have fluctuated between 6,000 mt and 15,000 mt per year. Vessels using pot gear began to make significant landings in the early 1990s. Pot and jig landings have increased substantially since 1997 when the State implemented a Pacific cod GHL fishery, which generally allows the use of only pot and jig gear. In each year since 2003, vessels using pot gear harvested the largest single-gear share of the catch. Most of the Pacific cod harvested by jig vessels from 1995 through 2000 occurred prior to June 10 (93 percent to 94 percent); however, these portions declined to 25 percent in the Western GOA and 69 percent in the Central GOA during recent years.

Total harvests of Pacific cod by all sectors peaked in 1999 at nearly 82,000 mt, and were as low as 48,000 mt in 2005 and 2006. Total Federal catch as a percentage of the Federal TAC has increased in recent years; however, the portion harvested generally declined in the years following the implementation of regulations to protect Steller sea lions in 2001.

II. Management of the GOA Pacific Cod Fisheries

A. GOA Federal Fisheries

To meet the management objectives for GOA Pacific cod fisheries and the harvest targets set during the harvest specification process pursuant to § 679.20(a), NMFS requires vessel operators fishing in Federal waters to comply with various restrictions, including fishery time and area closures and halibut PSC limits. In addition, groundfish harvests by several other groups of vessels have limits, known as sideboards, placed on their catches of Pacific cod in Federal waters and in State waters during the State parallel fisheries in the GOA that include: (1) catcher vessels (CVs) that qualified under the American Fisheries Act (AFA); (2) crab vessels that received crab quota share (QS) under the Crab Rationalization Program (70 FR 10174,

March 2, 2005) and are not otherwise subject to sideboard limitations under the AFA; and (3) vessels that are subject of the Amendment 80 program (72 FR 52668; September 14, 2007). Similarly, trawl CVs that also participate in the Rockfish program are allocated 2.09 percent of the Central GOA regulatory area Pacific cod TAC to support incidental catch of Pacific cod by cooperatives in the rockfish fisheries.

Section 679.64 establishes groundfish harvesting and processing sideboard limits on AFA C/Ps and CVs in the GOA. The sideboard limits are necessary to protect the interest of fishermen and processors who do not directly benefit through the AFA from those fishermen and processors who receive exclusive harvesting and processing privileges under the AFA. AFA CVs that qualify under § 679.64(b)(2)(ii) are exempt from GOA sideboard limits. Sideboard limits for non-exempt AFA CVs operating in the GOA are calculated based on their traditional harvest levels of TAC in groundfish fisheries covered by the FMP. Sideboard limits also restrict vessels participating in the BSAI snow crab fishery from using the increased flexibility provided by the Crab Rationalization Program (70 FR 10174, March 2, 2005) from expanding their level of participation in the GOA groundfish fisheries. Non-AFA crab vessels that fished snow crab from 1996-2000 and to any vessels fishing under the authority of groundfish licenses derived from those vessels are restricted to their collective historical landings in most GOA groundfish fisheries, as described in 50 CFR 680.22(d) and (e). Some affected vessels also are subject to another type of sideboard; these vessels are restricted from participating in the directed fishery for Pacific cod in the GOA, as described at § 680.22(a)(2). Targeted and incidental catch of sideboard species made by both non-exempt AFA and non-AFA crab vessels are deducted from their respected sideboard limits. NMFS calculates and publishes sideboard limits annually as part of the harvest specifications process.

To monitor compliance with catch limits, PSC limits, and sideboard regulations, NMFS requires various permits that authorize or limit access to the groundfish fisheries, such as a Federal fisheries permit (FFP), license limitation program (LLP) license, and Federal processor permit (FPP).

1. Federal Fisheries Permit (FFP)

All vessels participating in the GOA Pacific cod fishery, including motherships operating in the 3- to 200-nautical-mile exclusive economic zone of the GOA, are required to have an FFP onboard the vessel at all times (see § 679.4(b)(9)). An FFP authorizes a vessel owner to deploy a vessel to conduct operations in the GOA or BSAI under the following categories: catcher vessel, catcher/processor, mothership, tender vessel, or support vessel. A vessel may not be operated in a category other than the ones specified on the FFP. Owners and operators of harvesting vessels that participated in the GOA Pacific cod fisheries, except vessels using jig gear, are required to have an FFP endorsement for the species and regulatory area(s) in which the fishery is prosecuted. However, to participate in the offshore component of the GOA Pacific cod fishery as a mothership, only a mothership and area endorsement are required.

An FFP can include many endorsements, such as type of gear (e.g. pot, hook-and-line, and trawl), vessel operation category, and regulatory area (e.g., GOA) in which a permitted vessel is eligible to fish, and in some fisheries a species endorsement. For example, to harvest Pacific cod in the GOA Federal fisheries, the harvesting vessel must be designated on an FFP with endorsements that indicate the gear type used to prosecute the fishery. A GOA inshore processing endorsement is available for C/Ps under 125 feet (45.7 meters) LOA that wish to process GOA inshore Pacific cod; vessels exclusively endorsed as motherships that do not

harvest groundfish in the GOA are not eligible to participate in the inshore component of the GOA Pacific cod fishery under the authority of an FFP.

The operators of harvesting vessels that possess an FFP are required to comply with NMFS observer coverage requirements (§ 679.50(a)). In addition, federally permitted vessels participating in a pollock or Pacific cod fishery in the GOA are required to have onboard a transmitting vessel monitoring system (VMS), as described at § 679.28(f)(6). A VMS consists of a NMFS-approved transmitter that automatically determines a vessel's position and transmits that information to NMFS. While Pacific cod directed fisheries are open, all harvesting vessels with an FFP endorsed with a hook and line, pot, or trawl Pacific cod endorsement are required to have an operational VMS, regardless of where the vessel is fishing at the time or what the vessel is targeting, as described at § 679.28(f)(6). Thus, a VMS is required of all vessels with an FFP endorsed with a Pacific cod hook and line, pot, or trawl gear while fishing in the adjacent State waters (0 to 3 nm). However, vessels fishing exclusively in State waters are not required to be designated on an FFP, and the operator of such a vessel is not subject to NMFS observer, VMS, or recordkeeping and reporting requirements unless specified by the State.

FFPs are issued on a 3-year cycle. Each permit is in effect from the date of issuance through the end of the 3-year cycle. A vessel operator with an FFP can surrender the permit at any time and have the FFP reissued any number of times within the 3-year cycle. This flexibility is intended to provide a vessel owner with opportunities to participate in State waters fisheries, for which no FFP is required, without having to comply with the Federal requirements for operators of harvesting vessels designated on an FFP.

While any vessel owner can apply for an FFP with any combination of mothership, C/P, CV, area, gear, or species endorsements, an FFP with a specific set of endorsements, by itself,

does not necessarily authorize the operator or the vessel to participate in the Pacific cod fishery in the GOA. As in most fisheries in Federal waters, an LLP license also is required to participate in the GOA Pacific cod fishery.

2. License Limitation Program (LLP)

Prior to the establishment of the current LLP requirement, several management measures limited participation in the Federal GOA Pacific cod fisheries. Regulations restricting new vessels from entry into the groundfish fisheries were established in 1995 (60 FR 40763, August 10, 1995). Also, the AFA, signed into law on October 21, 1998 (Public Law 105-277), prohibited C/Ps that qualified under the AFA (AFA C/Ps) from fishing in the GOA. The current LLP requirements were implemented under Amendment 41 to the FMP (63 FR 52642, October 1, 1998). This action further limited entry into most fisheries prosecuted in Federal waters and established a 52,600 nm trawl closure in Eastern GOA regulatory area.

Effective since 2000, a groundfish LLP license authorizes a vessel to be used in a directed fishery for groundfish. Vessel operators fishing for groundfish must have an LLP license onboard at all times the vessel is engaged in fishing activities. LLP licenses are issued by NMFS to qualified persons, and an LLP license authorizes a license holder to deploy a vessel to conduct direct fishing for groundfish. In the GOA Pacific cod fisheries, several endorsements are required to be specified on an LLP license, such as vessel operation type, area, gear designation, and maximum length overall (MLOA). Several exemptions to the LLP requirement are listed at § 679.4(k)(2), including an exemption for specific jig vessels less than or equal to 60 feet (18.3 m) LOA.

Unlike the FFP, the endorsements on an LLP license are not generally severable from the license. An LLP license, with its associated endorsements, can be reassigned to a different

vessel only once per year. In general, a vessel is authorized to only use gear consistent with the gear designation on the LLP. However, like FFPs, vessels fishing in the parallel fisheries are not required to be designated on an LLP license because these fisheries occur only in State waters.

3. Federal Processor Permit (FPP)

Federal processor permits (FPPs) may be issued for shoreside processors and stationary floating processors (SFPs). SFPs are vessels of the United States operating as processors in the Alaska State waters that remain anchored or otherwise remain stationary in a single geographic location while receiving or processing groundfish harvested in the GOA or BSAI. An FPP is required for shoreside processors and SFPs that receive and/or process groundfish harvested from Federal waters or from any Federally-permitted vessels. There is no limit on the amount of inshore Pacific cod TAC that can be processed by permitted SFPs and shoreside processors. FPPs are non-transferable, 3-year permits issued to owners on request and without charge. These permits are authorized at § 679.4(f).

Owners of SFPs may apply for a GOA inshore processing endorsement on their FPP. This endorsement is required to process GOA inshore Pacific cod and pollock. SFPs that hold an inshore processing endorsement are prohibited from processing GOA Pacific cod in more than one single geographic location in the GOA during a fishing year. Although FPPs can be surrendered at anytime during a fishing year, a GOA inshore processing endorsement cannot be rescinded for the duration of a fishing year. It may be changed for the next fishing year by submitting an application for permit amendment prior to the beginning of that fishing year. Vessels holding the GOA inshore processing endorsement face additional operating restrictions described at § 679.7. During any calendar year, an FPP permit holder operating in the GOA can only operate as part of the “inshore component in the GOA”, as defined at § 679.2. All vessels

participating in the GOA groundfish fisheries are restricted from operating in both the “offshore component in the GOA” and the “inshore component in the GOA” during the same calendar year, as prohibited at § 679.7(a)(7)(iv) and (v). For example, during a calendar year an owner of an FFP issued a GOA inshore processing endorsement on their FFP cannot also hold an FFP that authorizes the license holder to conduct operations in the GOA as a catcher vessel, catcher/processor, mothership, tender vessel, or support vessel for groundfish. Similarly a FFP license holder with GOA catcher/processor endorsement cannot be used as a SFP in the “inshore component of the GOA” unless it first surrenders its FFP and is issued an FFP that meets the permitting requirements to operate at as SFP at a single geographic location in the GOA.

B. GOA Parallel Fisheries

During the Federal Pacific cod TAC fisheries, the State creates a parallel Pacific cod fishing season by generally adopting NMFS management actions in State waters; however, trawl gear is generally not allowed within State waters of the GOA. The State has management authority for groundfish resources within State waters, and the Commissioner of the Alaska Department of Fish and Game (ADF&G) opens parallel fisheries through emergency order under the Parallel Groundfish Fishery Emergency Order Authority at 5 AAC 28.086. These emergency orders establish parallel fishing seasons that allow vessels to fish for groundfish, including Pacific cod, within State waters with the same season as the Federal seasons. In addition, the Commissioner is authorized to open or close the fisheries under emergency order to adapt to unanticipated openings or closures of the Federal fisheries. There are no limits on the proportion of the Pacific cod TAC that may be harvested in State waters.

C. GOA State Waters Fisheries

In 1997, the State began managing Pacific cod fisheries inside of 3 nm (referred to as the

State waters fisheries or State GHL fisheries) that are generally open when the Federal and parallel fisheries are closed. The State waters Pacific cod seasons are managed under five Pacific cod management plans under the authority of State regulation. In the Prince William Sound (PWS)(5 AAC 28.267), the Kodiak (5 AAC 28.467) and the South Alaska Peninsula (5 AAC 28.577) management areas, the State waters Pacific cod fisheries open seven days after the Federal inshore A season for the respective regulatory area closes. The Cook Inlet Pacific cod fishery is authorized under 5 AAC 28.367 to open 24 hours after the Central GOA inshore A season closes, and the opening date for the Pacific cod fishery in the Chignik Area is set in regulation as March 15 (5 AAC 28.537). The State waters fisheries close when the GHL is harvested, or when the Commissioner closes the fishery under emergency order, on December 31, or whichever occurs later. Closing of the State waters fisheries typically occurs by August 31 to coincide with the opening of the B season parallel/Federal fishing season, as described in more detail in section 2.1.2 of the EA/RIR/IRFA for this action (see ADDRESSES).

The GOA Pacific cod State waters fisheries are allocated a specified portion of the Federal ABC. State waters fisheries' portions are managed by the Alaska Department of Fish and Game (ADF&G) toward a GHL, which limits catch in the fishery in a manner similar to management of the Federal TAC. If a GHL is fully harvested, the GHL can be increased on an annual basis up to 25 percent of the Pacific cod ABC in each GOA regulatory area, the maximum level permitted by State regulation. In 1997, 15 percent of the Pacific cod ABC in each of the three GOA regulatory areas was allocated among the State waters fisheries. Since then, allocations of Pacific cod GHL in the State waters fisheries have increased to 25 percent of the ABCs in each regulatory area. Allocations of GHL to the Eastern GOA have fluctuated in recent years. In 2004, the Eastern GOA GHL was lowered to 10 percent of the ABC because

that allocation had not been fully utilized by the fishery. The portion of the ABC allocated to the State waters fishery was increased to 15 percent in 2010, and 25 percent in 2011, in response to increased fishing effort and catch in the State waters fishery in the Eastern GOA.

State waters fisheries have gear and vessel-length restrictions. The GOA State waters Pacific cod fisheries are open to only pot and jig gear in all GOA State management areas except in Prince William Sound, which has allowed longline gear since 2009. In several areas, vessel size restrictions limit harvests by vessels greater than 58 ft (17.7 m) LOA or exclude those vessels from participating in the fisheries. Of the total Central GOA ABC, the State waters fisheries allocate 16.94 percent to the pot sector and 8.06 percent to the jig sector. Although there is no allocation specified in regulation to the South Alaska Peninsula area jig fleet, pot gear is allocated 85% of the GHL which represents 21.25 percent of the Western GOA ABC.

Allocations of GHL to pot vessels have generally been fully harvested in all State management areas except Prince William Sound from 1997 through 2009. Jig harvests were relatively high during 2003 through 2005 and again in 2009, but declined substantially in 2006 through 2008. A combination of poor weather conditions, difficulty finding fish in State waters, and high operating costs contributed to low levels of jig effort in those years. Most unharvested State-waters GHL was unharvested jig GHL resulting in a catch that was substantially below the GHL in all four Western and Central GOA State management areas in 2006 and 2007; and in Kodiak and Cook Inlet during 2008. In 2009, jig vessels in the Kodiak Management Area harvested the entire jig GHL, and more than 90 percent of the overall GHL was harvested in each GOA State management area, as described in more detail in section 2.1.2 of the EA/RIR/IRFA for this action. Generally, unharvested GHL may be rolled over to other gear types according to State regulatory management plans.

Many participants in the State waters Pacific cod fisheries also participate in the parallel/Federal Pacific cod fisheries. During 1997 through 2008, an average of 75 percent of Central GOA State waters pot catch and 93 percent of Western GOA State waters pot catch was harvested by vessels that also participated in the GOA Pacific cod parallel/Federal fishery (using any gear type) in a particular year. The majority (85 percent to 93 percent) of State waters pot catch is harvested by vessels that hold LLP licenses and also have access to the Federal waters fishery. There is less overlap between participants in the State waters jig fishery and the parallel/Federal waters Pacific cod fishery. The majority of vessels that participate in the State waters jig fishery do not participate in the parallel/Federal waters Pacific cod fishery. During 1997 through 2008, an average of only 43 percent of Central GOA State waters jig catch and 25 percent of Western GOA State waters jig catch was harvested by vessels that also participated in the GOA parallel/Federal fishery in a particular year.

Owners of some vessels that fish for Pacific cod in the Federal waters have surrendered their FFP licenses before fishing in the parallel waters or in the non-parallel-State waters Pacific cod fishery to avoid NMFS observer, VMS, and recordkeeping and reporting requirements, only to have the permits reissued for the opening of the Federal waters fishery. Surrendering or amending an FFP may degrade the quality of information available to manage the Pacific cod fishery.

III. Need for Action

A. Rationale for Amendment 83

Competition among participants in the Western and Central GOA Pacific cod fisheries has intensified in recent years. Because the TACs are not divided among gear or operation types, there is a derby-style race for fish and competition among the various gear types for shares of the

TACs. The proposed action would divide the Western and Central GOA Pacific cod TACs among the various gear and operation types, based primarily on historical dependency and use by each sector, while also considering the needs of fishing communities. This amendment is intended to enhance stability in the fishery by enabling operators within each sector to plan harvesting or processing activity during a fishing year, reduce competition among sectors, and preserve the historical division of catch among sectors, while providing opportunities for new entrants in these fisheries. Without sector allocations, future harvests by some sectors are expected to increase and impinge on the historical levels of catch by other sectors.

NMFS and the Council recognize that participants with significant long-term investments and extensive catch histories are highly dependent on the GOA Pacific cod fisheries and need stability in the form of sector allocations. If Amendment 83 is approved, it would supersede the inshore/offshore allocations and establish sector allocations for each gear and operation type in the Western and Central GOA Pacific cod fisheries, based primarily on historical catches, as well as conservation, catch monitoring, and social objectives, including considerations for small boat sectors and coastal communities traditionally participating in the inshore Pacific cod processing sector.

B. Problem Statement

To address these issues, the Council adopted a problem statement that is summarized below. The complete text can be found in section 1.1.2 of the EA/RIR/IRFA for this action (see ADDRESSES).

The limited access derby-style management of the Western GOA and Central GOA Pacific cod fisheries has led to competition among the various gear types (trawl, hook-and-line, pot and jig) and operation types (catcher processor and catcher vessel) for shares of the total allowable catch (TAC). Competition for the GOA Pacific cod resource has increased for a variety of reasons, including increased market value of cod products, rationalization of other fisheries in the BSAI and GOA, increased participation by

fishermen displaced from other fisheries, reduced Federal TACs due to the State waters cod fishery, and Steller sea lion mitigation measures including the A/B seasonal split of the GOA Pacific cod TACs. The competition among sectors in the fishery may contribute to higher rates of bycatch, discards, and out-of-season incidental catch of Pacific cod.

Participants in the fisheries who have made long-term investments and are dependent on the fisheries face uncertainty as a result of the competition for catch shares among sectors. To reduce uncertainty and contribute to stability across the sectors, and to promote sustainable fishing practices and facilitate management measures, the Western and Central GOA Pacific cod TACs should be divided among the sectors. Allocations to each sector would be based primarily on qualifying catch history, but may be adjusted to address conservation, catch monitoring, and social objectives, including considerations for small boat sectors and coastal communities. Because harvest sector allocations would supersede the inshore/offshore processing sector allocations for Pacific cod by creating harvest limits, the Council may consider regulatory changes for offshore and inshore floating processors in order to sustain the participation of fishing communities.

In addition, the Council recognized that the timing of the Pacific cod A and B seasons may have limited the participation of jig vessels in the parallel and Federal fisheries of the GOA. The State waters jig allocation has gone uncaught in some years, potentially due to the lack of availability of Pacific cod inside three miles. A non-historical Federal catch award, together with the provision of access in Federal waters for the State Pacific cod jig allocations, offers entry-level opportunities for the jig sector.

Currently, there are no limits on entry into the parallel waters groundfish fisheries, and no limits on the proportion of the GOA Pacific cod TAC that may be harvested in parallel waters. There is concern that participation in the GOA Pacific cod parallel waters fishery by vessels that do not hold LLP licenses may increase. The Council, in consideration of options and recommendations for the parallel fishery, will need to balance the objectives of providing stability to the long term participants in the sectors, while recognizing that new entrants who do not hold Federal permits or licenses may participate in the parallel fishery.

C. Amendment 83 Background

In 1999, the Council began developing a package of measures to rationalize the GOA groundfish fisheries, which included options to develop catch share management for CV and C/Ps in the Pacific cod fisheries. In April 2003, the Council defined a set of preliminary alternatives. From 2003 through 2006, the Council worked to develop and refine these alternatives. However, in December 2006, the Council decided to delay further consideration of the comprehensive rationalization program and instead, proceed with the more discrete issue of allocating the Pacific cod resource to various gear sectors. Simultaneously, the Council recommended limiting future entry to the GOA groundfish fisheries by extinguishing latent LLP groundfish licenses.

The Council also has taken final action on separate amendment packages to revise the LLP. In April 2008, the Council took final action to extinguish area endorsements on latent GOA and BSAI trawl LLP licenses. The final rule for that action was published August 14, 2009 (74 FR 41080). Subsequently, in April 2009, the Council took final action on Amendment 86 to the FMP. This action, also known as the GOA fixed gear recency action, would add non-severable, gear-specific Pacific cod endorsements to fixed gear licenses that qualify under the landings thresholds, and is intended to limit entry into the directed Pacific cod fisheries in the Federal waters of the Western and Central GOA. The notice of availability for this action was published July 2, 2010 (75 FR 38452), and the proposed rule was published July 23, 2010 (75 FR 43118). The final rule for this action was published on March 22, 2011, effective on April 21, 2011 (76 FR 15826).

The Council reviewed a preliminary EA/RIR/IRFA of Amendment 83 at its September 2007 meeting, and reviewed an initial draft EA/RIR/IRFAs in June 2008, December 2008, and October 2009. At its October 2009 meeting, the Council released the analysis for public review,

and the Council took final action on GOA Amendment 83, this proposed action, at the December 2009 meeting. If approved by the Secretary of Commerce, Amendment 83 would modify the following provisions in the FMP: the executive summary; section 3.2.6, Management Measures for the GOA Groundfish Fisheries; section 3.3.1 License Limitation Program; and section 4.1.2.2, Pacific cod. Amendment 83 sector allocations cannot be implemented mid-year; therefore, the final rule implementing Amendment 83, if approved, would be effective the following January 1st. Thus, the earliest effective date for the rule implementing Amendment 83 would be January 1, 2012.

IV. Description of the Proposed Action

A. Affected GOA Regulatory areas

If approved, this action would affect the GOA management area; it is not intended to directly affect fishing behavior outside of the GOA or in the BSAI management area. The proposed sector allocations would divide the Western and Central GOA Pacific cod TACs among the various gear and operation types, based primarily on the historical distribution of catch. Currently, the Western and Central GOA A season TACs are fully utilized, and vessels race to fully harvest the TAC. The GOA Pacific cod B season TACs have not been fully harvested in recent years, particularly in the Western GOA, due in part to reaching the halibut PSC limits; therefore, this proposed action would also further allocate PSC limits throughout the GOA. Sector allocations in the Western and Central GOA and GOA-wide PSC limit apportionments are expected to reduce competition among sectors in the A season and B season, but may not reduce competition among vessels within each sector, nor slow down the fisheries' prosecution.

In recent years, only a small proportion of the Eastern GOA TAC has been harvested,

although effort and catch has increased in recent years. From 2000 through 2008, the Pacific cod harvest in the Eastern GOA ranged from 0.4 percent to 11.8 percent of the Eastern GOA TAC, and was 39.3 percent and 49.8 percent of the Eastern GOA TAC in 2009 and 2010, respectively. The potential exists that the lack of any sector allocations in the Eastern GOA would provide an incentive for increased effort in that fishery. However, the Council did not perceive a need for such an action due, in part, to the differences in the prosecution of the Pacific cod fisheries in the Eastern regulatory area, such as the extensive trawl closures effectively prohibiting trawl fishing in the Southeast Outside district of the Eastern regulatory area. As a result, the Council recommended that the Eastern GOA Pacific cod TAC would not be allocated among sectors by this action.

Two elements of this proposed rule would apply to the entire GOA, including the Western, Central, and Eastern GOA regulatory areas. First, the hook-and-line CV and C/P halibut PSC limits would apply to the entire GOA, described in more detail in section VI of this preamble. Halibut bycatch by hook-and-line vessels operating in the Western, Central, and Eastern GOA would accrue against these PSC limits. Second, NMFS is proposing new FFP permitting requirements that would restrict the reissue of, or amendments to, FFPs by permit holders endorsed by gear and operation type to participate in all Federal or parallel Pacific cod fisheries throughout the Western, Central, and Eastern GOA, as described in more detail in section IX of this preamble.

B. Sector Designations by Area

The sectors designated by the Council to receive allocations of Pacific cod are identified in Tables 2a and 2b of this preamble and are identical in the Western and Central GOA except for hook-and-line CV sectors. In both areas the proposed sectors include jig, hook-and-line C/P,

pot CV and C/P combined, trawl C/P, trawl CV, and hook-and-line CV; however, in the Central GOA, the hook-and-line CV sector would be further divided by vessel length. In the Central GOA hook-and-line CVs less than 50 ft (15.2 m) LOA (<50 ft (15.2 m) LOA) are in one sector and hook-and-line CVs greater than or equal to 50 ft (15.2 m) (\geq 50 ft (15.2 m)) are in another sector. Historically, the majority of catch by hook-and-line CVs has been made by vessels <50 ft (15.2 m) LOA, but in recent years, there has been a substantial increase in effort by hook-and-line CVs that are between 50 ft (15.2 m) and 60 ft (18.3 m) LOA. Dividing this sector at 50 ft (15.2 m) LOA protects smaller boats from an influx of effort by vessels \geq 50 ft (15.2 m) LOA. The Council recognized that in the Central GOA the increased competition appears to result in safety at sea concerns, as smaller boats compete with larger vessel. However, by establishing a CV hook-and-line split, vessels \geq 50 ft (15.2 m) LOA that are long-time participants in the fishery would share an allocation with these more recent entrants. A similar CV sector split was not recommended for the Western GOA. The Western GOA has not seen a similar increase in effort by CVs \geq 50 ft (15.2 m) LOA. Moreover, the Western GOA hook-and-line CV sector has historically harvested a small percentage of the TAC, and if the TAC was further apportioned by vessel length, this sector's allocation would not support a directed fishery.

Under this action, the pot CV and pot C/P sectors would be combined in the Western and Central GOA because catch by pot C/Ps has been relatively small, and if apportioned individually, Pacific cod allocations for pot C/Ps would be extremely low. NMFS' experience with similar sector allocations has shown that small allocations can be difficult to manage, depending on the level of participation and effort in the sector. Moreover, most vessels that participated as pot C/Ps in the GOA Pacific cod fishery in recent years also have fishing history as pot CVs, and would contribute catch history to both the pot C/P and CV allocations.

Therefore, the Council recommended that the pot C/P and CV sectors receive a combined allocation in each area.

C. Qualifying Catch History

For Amendment 83 the Council defined each qualifying catch history as all retained catch of Pacific cod from both the Federal and parallel waters fisheries by season. In calculating each sector's directed and incidental catch histories for this action, the Council had several data sources to choose from. ADF&G fish tickets are issued by processors to CVs when a CV delivers fish for processing. Information on the fish ticket indicates the vessel that delivered the fish and the weight of that fish. Weekly Production Reports (WPRs) are submitted to NMFS by processors, including C/Ps, of the amounts of various fish products for that processor for the week listed.

Two accounting systems have been used to compile catch histories in the GOA Pacific cod fishery. The Blend database was used as NMFS' accounting system, from 1995 through 2002, and is composed of WPRs and observer data. Since 2003, NMFS has relied on the Catch Accounting database, which is composed of WPRs, fish tickets, and observer data. NMFS manages the Pacific cod fishery inseason with catch information collected from these databases. NMFS inseason management requires prompt reporting of catch to successfully manage the fisheries to stay within the established TACs and PSC limits. Fish ticket information prior to 2008 was not available quickly enough from ADF&G for NMFS' inseason management purposes because complete fish ticket data from the State can be submitted to NMFS up to three months into the following year. In addition, data from non-electronic WPRs and fish tickets takes time to compile and process. For these reasons, NMFS created an alternative database system for tracking catch that includes an electronic reporting system (eLandings) for

commercial fishery landings and production used by NMFS and the State.

Since 2007, the NMFS Catch Accounting database and the ADF&G Fish Ticket database have generally been in close agreement for retained catch estimates. The largest differences in the catch histories reported in the Fish Ticket database and those reported in the Blend and Catch Accounting databases are between the jig CV datasets, as reported in section 2.2.2 and Appendix B of the EA/RIR/IRFA for this action (see ADDRESSES). However the proposed allocation to the jig sector is not set at historic catch but is initially set higher to promote new entrants to the fishery. Under this proposed action, the jig sector's allocation is expected to vary from season to season based on the performance of that sector in the fishery. The proposed jig sector allocations would be deducted from the Federal TAC before other sector allocations are calculated. Unused allocations to the jig sector would be rolled over to other Federal sectors beginning with participants in the CV sector. Allocations to the jig sector are discussed in more detail in part A of section V of this preamble.

For C/Ps, the Council chose to use the NMFS Blend and Catch Accounting databases for purposes of developing the catch histories used in this action rather than WPRs. The Catch Accounting database relies on WPRs for C/Ps with 30 percent observer coverage and observer data for vessels with 100 percent observer coverage. Discrepancies between WPRs and the Blend and Catch Accounting databases are expected to be the result of underreporting on WPRs compared to observer data, the use of product recovery rates to back-calculate round weights for catch recorded on WPRs, and the increased use of observer estimates for C/Ps in Blend and Catch Accounting data. The EA/RIR/IRFA for this action describes these discrepancies in more detail in Appendix B (see ADDRESSES).

The Council elected to use the Blend and Catch Accounting databases to calculate

qualifying catch history for C/Ps based on recent experience with similar actions. In other previous actions, most notably BSAI Amendments 80 and 85, the Council used the data from ADF&G fish tickets for CVs and WPRs for C/Ps to calculate qualifying catch history. One reason for selecting this alternate approach is because certain product types, such as fishmeal, can be excluded from catch estimates. The inclusion of fishmeal was an issue in Amendments 80 and 85 because smaller vessels generally lack the capacity to process meal and catch histories might underestimate actual catch. For this proposed action, the Council decided to not exclude fishmeal from the definition of qualifying catch, even though WPRs in the GOA indicated that no C/Ps produced fishmeal from Pacific cod during the 1995 through 2006 fishing seasons.

For CVs, the Council decided to calculate the catch histories used in this action based on ADF&G fish tickets rather than the Blend and Catch Accounting databases. Fish tickets are a more comprehensive record of catch than the Blend database for CVs. As a result, catch estimates based on fish tickets are generally higher than those from the Blend database, which are based on WPRs and observer data. Catch Accounting estimates for CVs are based on fish tickets for vessels that deliver shoreside and use eLandings. The retained catch estimates are very similar between the Catch Accounting database and the Fish Ticket database; however, the catch history requested by the Council for this action extended back further than the advent of the Catch Accounting database in 2003. Therefore, the Council recommended using the catch history provided by fish tickets to provide the most comprehensive data for CVs.

In the Western GOA, the four options for calculating catch history included one option consisting of all retained catch during 1995 through 2005; see Table 2a of this preamble. This period includes six years of catch history prior to implementation of the Steller sea lion protection measures in 2001. The Steller sea lion measures resulted in a shift of catch from trawl

gear to pot gear. By including the earlier time period, this action accounts for the catch history of the trawl sector prior to this shift and generally favors trawl vessels. In the Central GOA the catch histories include more recent years, 2002 through 2008, and generally favor the pot CV sector and to a lesser extent the hook-and-line sectors. The options in the Central GOA do not include retained catch from 1995 through 2000 (see Table 2b of this preamble) because the reduction in trawl catch concurrent with implementation of the Steller sea lion protection measures in the Central GOA was less than in the Western GOA.

Table 2a. Average percent of the total catch of Pacific cod over various years in the Western GOA by each sector, except jig.

Western GOA	% Hook- and- line C/P	% Hook- and- line CV	% Pot C/P	% Pot CV	% Trawl C/P	% Trawl CV
1995–2005, best 7 years*	19.8	0.5	2.2	28.0	2.5	46.9
2000–2006, best 5 years	21.8	0.6	2.3	40.7	2.6	32.0
2002–2007, best 5 years	22.7	1.2	1.6	46.0	2.4	26.1
2002–2008, best 5 years	21.8	1.7	1.5	44.5	2.4	28.1
Each sector's best option	18.6	1.4	1.9	37.6	2.1	38.4
Average of all options	21.5	1.0	1.9	39.8	2.5	33.3

* Contains rounding errors $\pm 0.1\%$

Table 2b. Average percent of the total catch of Pacific cod over various years in the Central GOA by each sector, except jig.

Central GOA	% Hook- and- line C/P	% Hook- and- line CV ≥ 50	% Hook- and- line CV < 50	% Pot C/P	% Pot CV	% Trawl C/P	% Trawl CV
2000–2006, best 5 years*	4.2	14.6	6.2	1.0	25.3	4.4	44.2
2000–2006, best 3 years*	4.7	14.0	5.6	1.4	28.0	4.4	42.0
2002–2007, best 5 years*	5.2	15.5	7.1	0.4	25.9	3.5	42.4
2002–2007, best 3 years*	4.9	14.7	6.9	0.5	28.2	3.3	41.4
2000–2008, best 5 years	5.5	14.6	7.8	0.3	25.8	3.3	42.7
2000–2008, best 3 years*	5.2	14.7	6.9	0.5	28.1	3.3	41.4
Each sector's best option	5.1	14.6	6.7	1.3	26.5	4.2	41.6
Average of all options	4.9	14.7	6.7	0.7	26.9	3.7	42.4

* Contains rounding errors $\pm 0.1\%$

For the purposes of setting sector allocations for the non-jig sectors, the Council recommended the highest of all averages across the various options to reduce disparities among the options. The Council and NMFS noted that this would result in differences depending on the years selected as the highest especially after the catch histories were scaled among sectors to allocate 100 percent of the TAC. Using each sector's best percentage increases the percentage

allocation to sectors with a best option that is substantially higher than that sector's average option. Furthermore, this recommendation would decrease TAC allocations to sectors with a best option closer to that sector's average option. In some cases this results in an allocation that is less than each of the respective sector's average catch history. At final action the Council recommended further adjustments to these historical catch histories to address these discrepancies. Adjustments to the catch histories are explained in more detail in section V of this preamble.

V. Allocation of Total Allowable Catch (TAC)

Under Amendment 83, NMFS would remove from regulations the inshore/offshore allocations of TAC for Pacific cod in the Western and Central GOA and instead assign each sector an allocation of Pacific cod TAC to support each sector's directed and incidental catch needs. With the exception of the jig sector, the Council's recommended TAC allocations are based on each sector's best option from four catch history options in the Western GOA and six options in the Central GOA (Tables 2a and 2b of this preamble). The catch histories were then scaled so that the proposed allocations sum to 100 percent. The Council further apportioned the annual catch histories by season to reflect the seasonal fishing behaviors of each sector. If the amendment is approved, NMFS would seasonally apportion sector allocations between the A and B seasons, based on each sector's seasonal catch history during the qualifying years, while maintaining the aggregate 60 percent/40 percent apportionment of the TAC in each regulatory area.

In the Western GOA regulatory area these historical values were adjusted to incorporate changes in fishing behavior since the implementation of Steller sea lion protection measures. In the Western GOA allocations to the pot CV and C/P, hook-and-line C/P, and trawl C/P sectors'

allocations were adjusted to account for differences between using each sector's best option and the average retained catch across the four options in the Western GOA. Specifically, the seasonal apportionments of the Western GOA trawl CV and pot CV and C/P allocations were shifted to allow a great portion of the trawl allocation be assigned during the A season because there is little historic trawl effort during the B season. These differences are described in detail in section 2.3.8 of the EA/RIR/IRFA for this action (see ADDRESSES).

In the Central GOA, the trawl CV sector's Pacific cod allocation would continue to support the incidental catch in the directed rockfish fishery. Currently, trawl CVs that also participate in the Rockfish program are allocated 2.09 percent of the Central GOA regulatory area Pacific cod TAC to support incidental catch of Pacific cod by cooperatives in the rockfish fisheries. This action would not change their portion of the Pacific cod allocation; however, the incidental catch of Pacific cod by trawl CVs targeting rockfish will be deducted from the Central GOA trawl CV B season TAC allocation, as calculated in part B step 4 of section V of this preamble.

A. Allocations to the Jig Sector

In general, the Council's proposed allocations of Pacific cod are intended to formally institutionalize the historical pattern of the Pacific cod fisheries prosecution; however, this action would establish allocations to the jig sector in the Western and Central GOA regulatory areas that are greater than the average catch history. Typically, retained catch from the jig sector in the Western and Central GOA regulatory areas was less than one percent of the TAC from 1995 through 2010. Under this action, NMFS would increase the amount of Pacific cod TAC allocated annually to jig vessels by establishing an allocation to the jig sector that is greater than the historic catch. If approved, NMFS would allocate the jig sector 1.5 percent of the Western

GOA and 1 percent of the Central GOA Pacific cod TAC.

This action is intended to expand entry-level opportunities in the GOA Pacific cod fishery by providing increased initial allocations to the jig sector and through provisions to accommodate increased harvest by this sector. The Council recommended a stair-step provision to increase the jig allocation by 1 percent the following fishing year, if 90 percent, or greater, of the Federal jig allocation in a regulatory area were harvested in any given year. Amendment 83 contains provisions that would increase the percentage allocated to the jig sectors, up to 6 percent of the TAC in the Western and Central GOA. Although the Pacific cod allocations to the jig sectors would not decrease below its initial level of 1 percent of the TAC, the jig allocation in each regulatory area would be stepped down in 1 percent annual increments, if less than 90 percent of the allocation prior to the most recent stair-step increase were not harvested during two consecutive years following the stair-step increase, as portrayed in Table 3 of this preamble.

Table 3. Possible harvest scenarios affecting the annual jig sector allocation of Pacific cod in the Western and Central Gulf of Alaska regulatory areas.

If the previous year’s jig sector allocation in the Western or Central GOA regulatory areas—	Then, in the following year, the jig sector’s portion of the Federal Pacific cod TAC would—
Was less than 6 percent of the total Federal Pacific cod TAC in that area and 90 percent, or greater, of the TAC was harvested in a given year	Increase by one percent.
Was 6 percent of the total Federal Pacific cod TAC in that area and 90 percent, or greater, of the TAC was harvested in a given year	Not change.
Was equal to or less than 6 percent of the total Federal Pacific cod TAC in that area and less than 90 percent of the TAC allocated prior to the most recent stair-step increase was harvested in that year	Not change.
Was equal to or less than 6 percent of the total Federal Pacific cod TAC in that area and less than 90 percent of the TAC allocated prior to the most recent stair-step increase was harvested for a total of two consecutive years	Decrease by one percent.
Was equal to one percent in the Central GOA or 1.5 percent in the Western GOA and less than 90 percent of the TAC was harvested in the last two consecutive years	Not change.

Amendment 83 is intended to ensure that changes to the portion of Pacific cod available to the jig sector do not alter the historic percentages assigned to other non-jig sectors. If implemented, NMFS would deduct the jig allocations from the total Pacific cod TAC in the Western GOA and Central GOA before assigning TAC to non-jig sectors. The allocations to the non-jig sectors would be calculated from a reduced amount of TAC in each regulatory area. The Council recommended this allocation priority for the jig sector to promote stability in the Pacific cod fisheries by retaining the relative value of the non-jig sector allocations at historic levels. An example of this calculation is provided in part A step 1 of section V of this preamble.

The Council included two sets of management measures for the jig allocation when it took final action on Amendment 83. To implement the first set of management measures, NMFS proposes that any portion of the parallel/Federal waters jig allocation would be apportioned 60 percent and 40 percent between the A and B seasons, respectively. NMFS would amend the regulations at § 679.23(d)(3) to modify the opening and closing dates of the parallel/Federal jig seasons to correspond with the GHL seasons. Under component 5 the Council recommended that the Federal jig sector allocation be divided between an A season, opening on January 1 and closing when the A season allocation is reached or on March 15, whichever occurs first and a Federal B season which would open on June 10 or after the State GHL season closes, or whichever happens first.

NMFS is proposing Federal A and B seasons for vessels using jig gear that are consistent with the Council's intent to increase opportunities for the jig sector to access Pacific cod; however, this action would not implement a mandatory March 15 limit for the Federal A season. NMFS will continue to work with the State of Alaska Board of Fisheries Joint Protocol Committee to create a seamless Federal and State GHL jig fishery that would increase access to Federal waters for vessel using jig gear. An analysis of the best available information has revealed several complications associated with implementing the recommended March 15 closure date. The March 15 closure date was recommend by the Council, in part, after reviewing the historic Western and Central GOA Federal A season closure dates; however, the recommended season does not account for the different regulatory triggers which open the State waters GHL fishery in each of the State management areas.

The Council contemplated reciprocal regulatory action by the State of Alaska Board of Fisheries (BOF) to synchronize the State and Federal season; however the BOF has yet to

recommend similar action to establish a seamless jig fishery season. The BOF is expected to take action on Pacific cod agenda items during its October 2011 meeting. NMFS does not presume to know what date, if any, the BOF might set for each State management area.

Therefore, NMFS is proposing to not implement the March 15 closure date. NMFS could revise the final rule to implement Amendment 83 to establish a March 15 closure date for the Federal A season jig fishery if the BOF takes action to specifically establish that closure date.

NMFS interprets the March 15 closure date for the A season Federal TAC season as guidance to the BOF for the ongoing discussion with the Joint Protocol Committee. To meet Council intent, it is not tenable to implement the March 15 closure date, as recommended by the Council. Therefore, if this rule is implemented NMFS would not close the A season fishery on March 15, but would instead close the fishery when the TAC has been harvested or on June 10 whichever occurs first. This action is intended to provide a seamless Federal jig fishery while providing the State of Alaska BOF the flexibility necessary to open and close the GHL and parallel fisheries in each regulatory area as they see fit. Harvest from the parallel/Federal fishery would be deducted from the TAC and harvest from the state GHL fishery would be deducted from the GHL.

Moreover, the language of the Council's motion is not clear in regards to opening the Federal B season. The motion mentions only one GHL season closure as the trigger for opening the B season. However there are different GHL closure dates for each of the State management areas depending on the rate of harvest and overall amount of GHL available to jig gear. In some areas the GHL season is not closed and GHL is left unharvested annually (e.g., Chignik Management Area). In order to implement the Council's motion, NMFS would have to rely on a specific action of the State—closure of a GHL fishery, to begin the B season fishery. Due to the

ambiguous definition of “a GHL fishery”, NMFS cannot precisely determine which closure of which GHL fishery would be used to establish the opening date of the Federal B season fishery. This lack of specificity is particularly problematic in the Central GOA. Four State managed GHL fisheries occur within the Central GOA management area – Prince William Sound, Cook Inlet, Kodiak, and Chignik. The Council did not specify if one, two, three, or all four State GHL fisheries would need to be closed by the State before the Federal B season jig fishery could open. Due to this lack of specificity, NMFS is proposing to retain the current jig B season opening date of June 10. The Federal B season jig allocation would remain open from June 10 until the jig TAC is reached, or December 31, whichever occurs first.

The jig A season would close on or before June 10 and the B season would open June 10. In years where the A season jig TAC is not fully harvested prior to June 10, the latest closing date for the A season, NMFS inseason management would assess the amount of A season TAC remaining and the ability of the fleet to harvest that TAC. Any unused A season TAC allocated to a sector under this action could be reapportioned to that sector for the B season. This action is necessary to provide jig vessels additional opportunity to safely harvest their unharvested A season Pacific cod TAC allocations in the B season. For non-jig sectors, the B season would open on September 1.

NMFS notes that the proposed concurrent management of Federal TAC and State GHL seasons complicates catch accounting for State and Federal managers. If this action is approved, the assignment of catch to the TAC or GHL fishery will become more complex due to the overlapping season. NMFS notes that it may be necessary for increased coordination and outreach among State fishery managers and the jig fleet to ensure accurate accounting of landings to the State or Federal statistical area of harvest.

The BOF has requested proposals to change the Pacific cod regulations for the Prince William Sound Area (Registration Area E), Cook Inlet Area (Registration Area H), Kodiak Area (Registration Area K), Chignik Area (Registration Area L), and South Alaska Peninsula Area (Registration Area M). Based on past experience in similar actions, NMFS expects that the BOF will act to address changes to the State waters Pacific cod fisheries at their October 2011 meeting.

The Council also recommended as part of Amendment 83 a second set of management measures dependent on BOF action that are not addressed in this proposed rule. The Council is considering alternative measures for managing the Federal jig fisheries consistent with the Council's stated goals and in coordination with the BOF Joint Protocol Committee.

1. Example of TAC Allocations to the Jig Sector

The following section provides an example of how the Pacific cod TAC allocations to the jig sector would be calculated if Amendment 83 is implemented. The figures used in this example are based on the ABCs and TACs established for 2011 as part of the final harvest specifications for groundfish of the GOA (76 FR 11111, March 1, 2011). The estimates used in these examples are subject to future regulatory change before the final harvest specifications are published in the Federal Register for the 2012 Pacific cod fishing year.

Step 1: Subtract GHL for the State waters fisheries from the ABC to calculate TAC. NMFS would establish the GOA overfishing level (OFL), and the Western, Central, and Eastern ABCs for Pacific cod in the GOA according to the methodology described in part C of section I of this preamble. Table 4 of this preamble displays the allocation of the ABCs to the Western, Central, and Eastern GOA regulatory areas. NMFS would set each GOA Pacific cod TAC less than or equal to the regulatory area ABC. The Pacific cod TACs in the GOA are calculated to

accommodate the State’s GHLS for Pacific cod. As detailed in part C of section II of this proposed rule, the TAC would be reduced up to 25 percent of the ABC in each regulatory area to account for harvest in the State waters fisheries. After accounting for the GHL, NMFS would calculate TAC for each regulatory area ($ABC - GHL = TAC$ as shown in Table 4). The calculations used this example are approximate because the Council could choose to set the TAC less than the ABC-GHL.

Table 4. Example calculations for determining the amount of GOA Pacific cod ABC for harvest in the State waters fisheries GHL and example TAC allocations.

GOA Regulatory Area (OFL= 102,600 mt)	ABC mt	% ABC deducted to account for GHL	GHL subtracted from ABC mt	% ABC remaining for TAC	TAC = (ABC-GHL) mt
WGOA	30,380	25	7,595	75	22,785
CGOA	53,816	25	13,454	75	40,362
EGOA	2,604	25	651	75	1,953

Step 2: Calculate TAC allocation to the jig sector. NMFS would need to calculate the allocation of Pacific cod TAC to the jig sector first and then apportion the remaining TAC among the non-jig sectors in the Western and Central GOA, as described in detail in part B of section V of this preamble. Table 5 displays estimates of the jig sector TAC allocation for Pacific cod by regulatory area and season assuming the recommended initial jig sector allocations are approved for the Western and Central GOA at 1.5 percent and 1 percent, respectively. Further description of the stair-step provisions for increasing and decreasing the jig sector’s portion of the TAC can be found earlier in this section. After assigning TACs to each regulatory area, NMFS would calculate the jig sector allocation ($TAC \times \text{percent jig allocation} = \text{annual jig TAC}$) in the Western and Central GOA. This proposed action does not allocate TAC by season or sector in the Eastern GOA for reasons detailed in part B of section IV of this

preamble. Allocations to the Eastern GOA are provided in this example to include a complete picture of the GOA Pacific cod fishery.

Table 5. Example of Pacific cod TAC allocations to the jig sector in the Western and Central GOA.

Regulatory Area	TAC mt	% Total TAC	Jig Sector % TAC	Jig Sector TAC mt	Non-jig Sectors % TAC	Non-jig Sectors TAC mt
WGOA	22,785	35.0	1.5	342	98.5	22,443
CGOA	40,362	62.0	1.0	404	99	39,958
EGOA	1,953	3.0	0.0	0	100	1,953
Total	65,100	100	N/A	746	N/A	64,254

B. Seasonal Sector Allocations by Area to Non-Jig Sector Participants

The Council recommended seasonal allocations of Pacific cod to each sector as part of Amendment 83. The values for each sector, except jig, in the Western GOA and Central GOA, as recommended by the Council are presented in Table 6 below.

Table 6. Recommended Pacific cod sector allocations as approved by the North Pacific Fisheries Management Council during final action on Amendment 83.

Western GOA sector allocations after the jig allocation is subtracted from the TAC							
Sector	% Annual Allocation	Compare to 60/40		A season allocation	B season allocation	A season allocation	B season allocation
		% A season	% B season	% Annual Allocation	% Annual Allocation	% Seasonal Allocation	% Seasonal Allocation
HAL CV	1.4	47.2	52.8	0.7	0.7	1.1	1.8
HAL C/P	19.8	55.2	44.8	10.9	8.9	18.2	22.2
Trawl CV	38.4	72.3	27.7	27.7	10.7	46.2	26.6
Trawl C/P	2.4	37.9	62.1	0.9	1.5	1.5	3.7
Pot CV/C/P	38.0	52.0	48.0	19.8	18.2	32.9	45.6
Total	100.0			60.0	40.0	100.0*	100.0*
Central GOA sector allocations after the jig allocation is subtracted from the TAC							
Sector	% Annual Allocation	Compare to 60/40		A season allocation	B season allocation	A season allocation	B season allocation
		% A season	% B season	% Annual Allocation	% Annual Allocation	% Seasonal Allocation	% Seasonal Allocation
HAL CV <50	14.6	63.9	36.1	9.3	5.3	15.5	13.2
HAL CV ≥50	6.7	84.0	16.0	5.6	1.1	9.4	2.7
HAL C/P	5.1	80.3	19.7	4.1	1.0	6.8	2.5
Trawl CV	41.6	50.8	49.2	21.1	20.5	35.2	51.2
Trawl C/P	4.2	48.8	51.2	2.0	2.2	3.4	5.4
Pot CV/C/P	27.8	63.9	36.1	17.8	10.0	29.7	25.1
Total	100.0			60.0*	40.0*	100.0	100.0*
*Due to rounding, percentages for each sector might not sum to totals.							

NMFS proposes seasonal allocations to non-jig sectors that differ slightly from the Council's motion. The Council's motion for Amendment 83 recommended seasonal and sector allocations that contain truncation or rounding errors, which result in total seasonal allocation percentages that, in some cases, do not equal 100 percent annually (see Table 6 of this

preamble). The Council noted these discrepancies at final action but did not offer guidance on revising the values. NMFS proposes to remove these errors in order to implement the Council's objectives for promoting stability and predictability in the GOA Pacific cod fishery. If implemented NMFS would (1) revise the percentages allocated to each sector in the Central GOA by expanding the value to the hundred-thousandth place, (2) calculate the difference between the seasonal percentages in Table 7 and the 60 percent and 40 percent intended as the seasonal distribution of fishing effort, and then (3) equitably apportion the difference as a pro rata amount from each sector.

Under the Council's recommended allocations, the Central GOA would be allocated 59.9 percent and 40.1 percent of the annual TAC to the A season and B season, respectively. If implemented, NMFS would modify the recommended sector allocations, by shifting 0.1 percent of the annual TAC from the B season to the A season. As a result, NMFS proposes reducing each sector's B season allocation by their pro rata portion of 0.1 percent and adding to each sector's A season allocation their pro rata share of 0.1 percent. The resulting percentage allocations sum to 60 percent and 40 percent in the A and B seasons, respectively, as displayed in Table 7 of this preamble. This approach would provide an equitable redistribution of the seasonal TAC allocation to each sector and would result in a minimal change relative to the Council's motion.

Table 7. Example comparison of the Council’s proposed allocations and the corrected values proposed by NMFS under this action.

Central GOA annual TAC allocations to the A and B seasons after the jig allocation is subtracted from the TAC						
Sector	% of A season allocations			% of B season allocations		
	Council's Motion	Proposed	Difference	Council's Motion	Proposed	Difference
HAL CV <50	9.30000	9.31552	0.01552	5.3000	5.28678	0.01322
HAL CV ≥50	5.60000	5.60935	0.00935	1.1000	1.09726	0.00274
HAL C/P	4.10000	4.10684	0.00684	1.0000	0.99751	0.00249
Trawl CV	21.10000	21.13523	0.03523	20.5000	20.44888	0.05112
Trawl C/P	2.00000	2.00334	0.00334	2.2000	2.19451	0.00549
Pot CV/C/P	17.80000	17.82972	0.02972	10.0000	9.97506	0.02494
Total	59.90000	60.00000	0.10000	40.1000	40.00000	0.10000

1. Example of Allocations to Fishery Participants

Step 1: Assign TAC to Western and Central GOA regulatory areas. If Amendment 83 is approved, NMFS would allocate TAC to non-jig sectors in the Western and Central GOA, as specified in part B of section V of this preamble. First, NMFS would need to calculate the amount of TAC remaining after the deductions for the jig sector (Total TAC – jig TAC = non-jig TAC). The remaining TAC will be allocated to each non-jig sector as calculated below. In this example, the total TAC amounts (Table 4) are reduced by 342 mt in the Western GOA and 404 mt in the Central GOA (Table 5) to account for the jig sector’s allocation. The remaining TAC will be further allocated to each non-jig sector, as calculated in Step 2 below.

Step 2: Assign TAC to sectors by season in Western and Central GOA. NMFS would allocate the remaining TAC to each sector as described in parts A and B of section V of this preamble. NMFS would need to apportion the remaining TAC (Table 5) among the non-jig sectors at the seasonal percentages proposed by NMFS.

Although the length and timing of seasons often differs among sectors, NMFS would calculate the seasonal apportionments of the TAC using the same methodology. NMFS would multiply each sector's seasonal portion of the annual TAC by the amount of TAC allocated to non-jig sectors in the Western and Central GOA regulatory areas. NMFS would not allocate the Eastern GOA TAC among sectors or season; however, NMFS would continue to apportion the Eastern GOA TAC between the inshore (90 percent of the TAC) and the offshore (10 percent) components of the fishery, as displayed in Table 8 below.

Table 8. Example of the adjusted Pacific cod allocations in the GOA by regulatory area, sector and season, and inshore/offshore as proposed under Amendment 83.

Regulatory Area and Sector	Seasonal Allowances			
	A Season (60%)		B Season (40%)	
	% of Annual Non-Jig TAC	Total mt	% of Annual Non-Jig TAC	Total mt
Western GOA				
Jig	N/A	205	N/A	137
Hook-and-line CV	0.70	157	0.70	157
Hook-and-line C/P	10.90	2,446	8.90	1,997
Trawl CV	27.70	6,217	10.70	2,401
Trawl C/P	0.90	202	1.50	337
All Pot CV and C/P	19.80	4,444	18.20	4,085
Total	60.00	13,671	40.00	9,114
Central GOA				
Jig	N/A	242	N/A	162
Hook-and-line <50 CV	9.32	3,722	5.29	2,112
Hook-and-line ≥50 CV	5.61	2,241	1.10	438
Hook-and-line C/P	4.11	1,641	1.00	399
Trawl CV	21.13	8,445	20.45	8,171
Trawl C/P	2.00	801	2.19	877
All Pot CV and C/P	17.83	7,125	9.97	3,986
Total	60.00	24,217	40.00	16,145
Eastern GOA*				
	Component Allocation			
TAC mt	Inshore mt (90%)	Offshore mt (10%)		
1,953	1,758	195		

* Although this action would not change the current inshore/offshore allocation in the Eastern GOA, the estimated TAC is included to provide a complete example of Pacific cod allocations in the GOA should this action be approved.

Step 3: Apportion Central GOA trawl CV B season allocation to the rockfish fishery. In the Central GOA regulatory area, CVs participating in the Rockfish Program (as defined at 50 CFR 679.2) would be allocated a portion of the B season trawl CV allocation. This TAC would be allocated to rockfish participants as cooperative quota. Each year NMFS would calculate the

incidental catch of Pacific cod required for the Rockfish Program by multiplying the amount of Central GOA trawl CV TAC by 2.09 percent. Using data calculated from the 2011 example in Table 8, NMFS estimates that 171 mt of Pacific cod would be deducted from the Central GOA B season TAC ($8,171 \text{ mt} \times 2.09\% = 171 \text{ mt}$).

C. Reallocation of Unharvested Pacific Cod among Sectors

NMFS anticipates, based on experience in the BSAI, that if GOA Pacific cod is allocated to various sectors, one or more sectors would be unable to harvest their annual allocation of the Pacific cod TAC. Thus, to provide an opportunity for the full harvest of the GOA Pacific cod TAC, NMFS would reallocate Pacific cod TAC that is projected to be unharvested to other sectors.

The priority reallocation of unharvested Pacific cod to CVs is intended to promote stability in coastal communities that are dependent on the Pacific cod fishery and have traditionally participated in the fishery as part of the inshore sector. During the last fishing season of the year, i.e. B season, NMFS would consider if sectors would be unlikely to use their remaining GOA Pacific cod allocation. Any portion of a CV, C/P, or jig allocation that NMFS determines will remain unharvested during the remainder of the fishing year would become available to other sectors for harvest as soon as practicable. NMFS would reallocate these projected unused allocations to the CV sectors first, and then to all sectors, taking into account the capability of a sector, as determined by NMFS's Alaska Regional Administrator, to harvest the remaining Pacific cod TAC. However, NMFS may reallocate the projected unused allocations to the combined pot CV and C/P sectors first, after consideration the CV sectors first, and then the remaining sector's capability to fully harvest the remaining TAC.

VI. Prohibited Species Catch (PSC) Allocations

PSC regulations pertain to certain species caught in the process of fishing for groundfish that must be accounted for but cannot be retained, except for halibut and salmon retained under the donation program at § 679.26. Regulations at § 679.21 establish PSC limits in the GOA groundfish fisheries for Pacific halibut. These regulations include separate Pacific halibut PSC limits for hook-and-line and trawl gear at § 679.21(d)(4). Attainment of a PSC limit results in directed fishing for Pacific cod being prohibited, even if the seasonal Pacific cod apportionment has not been fully harvested. Trawl vessels, and, to a lesser extent, hook-and-line vessels, compete to catch Pacific cod at the highest possible rate during the B season, with the knowledge that halibut PSC limits may close the Pacific cod B season at any time. Halibut PSC limits often constrain the length of the B season for these sectors. During years when the halibut PSC limit has not limited participation by trawl and hook-and-line vessels, the B season TACs have been fully harvested.

A. General Description

NMFS proposes to apportion the non-demersal shelf rockfish fishery portion of the hook-and-line halibut PSC limit between operation types as part of the harvest specifications process. Hook-and-line sector allotments of halibut PSC limits are intended to protect the historical B season catches during these years, but would not be expected to directly impact halibut bycatch. The proposed apportionments of halibut PSC limits are intended to increase the ability of each hook-and-line sector to plan their fishing operations, as described in further detail in section 2.2.8 of the EA/RIR/IRFA for this action (see ADDRESSES).

Apportioning the halibut PSC limit to hook-and-line CV and C/P sectors would prevent one sector from pre-empting the other sector's fishing season by using a greater than expected proportion of the hook-and-line halibut PSC limit. These PSC apportionments also would apply

to hook-and-line CVs and C/Ps operating in the Eastern GOA; however, the halibut PSC limit apportionments would only be derived from Pacific cod TAC allocations to the Western and Central GOA. Annually, NMFS would calculate the halibut PSC limit apportionments for the entire GOA to hook-and-line CVs and C/Ps.

This action would not affect halibut PSC limits apportioned to trawl vessels; however, the Council is considering action to further modify halibut PSC limits in the GOA during their October 2011 meeting.

1. Example of PSC Calculations

The following section provides an example of the calculations necessary to allocate the halibut PSC limit between the hook-and-line CV and C/P sectors, as proposed by this action. The figures used in this example are based on the 2011 PSC limits and 2011 Pacific cod ABC area apportionments established as part of the final harvest specifications for groundfish of the GOA (76 FR 11111, March 1, 2011).

Step 1: Calculate the total percent allocations of Pacific Cod to the respective hook-and-line sectors for the Western and Central GOA. The Council recommended that NMFS allocate the GOA hook-and-line halibut PSC limit between the C/P and CV sectors in proportion to the total Western and Central GOA Pacific cod percent allocations to each hook-and-line sector. This is accomplished by summing the respective hook-and-line percent sector allocations for each operation type for the Western and Central GOA, as shown in Table 9. In the Central GOA this requires the additional step of combining the TAC allocations of both hook-and-line CV sectors (<50 ft (15.2 m) LOA and \geq 50 ft (15.2 m) LOA). Although the halibut PSC limits proposed by this action apply to the entire GOA, including the Eastern GOA regulatory area, the apportionment of the hook-and-line PSC limits would be calculated solely based on the hook-

and-line allocations of the Western and Central GOA TACs as described in Table 9 of this preamble.

Step 2: NMFS must scale the total hook-and-line CV and C/P Pacific cod percent allocations to reflect the relative size of the Pacific cod TAC area apportionments. Annually, NMFS would need to scale the total hook-and-line CV and C/P percent sector allocations in proportion to the relative size of the Pacific cod TAC area apportionments, because the Pacific cod TAC allocations to each regulatory area may change depending on the stock status in each area, as determined by the annual surveys. NMFS would then apportion the GOA hook-and-line halibut PSC limit to the hook-and-line sectors in proportion to the scaled hook-and-line sector allocations.

Table 9. Example for calculating the relative amount of TAC allocated to the Western and Central GOA and for calculating the total hook-and-line CV and total hook-and-line C/P percentage allocation in each regulatory area.

Combined Sectors	% of WGOA TAC (Scaled)	% of CGOA TAC (Scaled)	Sum of %
HAL C/P	7.1	3.3	10.4
HAL CV	0.5	13.6	14.1

Step 3: Apportion total hook-and-line PSC limits between hook-and-line CVs and C/Ps. The Council recommended that NMFS maintain the 2011 halibut PSC limits of 2,000 mt for the trawl fisheries and 300 mt for the hook-and-line fisheries. Ten mt of the hook-and-line PSC limit is further allocated to the demersal shelf rockfish fishery, leaving 290 mt to be allocated between the hook-and-line CVs and C/Ps. To calculate the annual hook-and-line allocations of the PSC limit, NMFS would multiply the scaled annual allocations of TAC by the 290 mt non-demersal shelf rockfish hook-and-line PSC limit. In the 2011 example, NMFS calculated that hook-and-line CV and hook-and-line C/P sectors would receive 167 mt and 123 mt, respectively, as shown in Table 10 of this preamble.

Table 10. Hook-and-Line (HAL) halibut prohibited species catch limits by operational type for the Gulf of Alaska groundfish fisheries.

Combined Sectors	Sum of %	Relative % between C/P and CV	PSC Limit mt
HAL C/P	10.4	42.4	123
HAL CV	14.1	57.6	167

Step 4: Project and reallocate unused PSC limits. NMFS would reallocate PSC projected to remain unused by a sector at the end of the fishing year to the other hook-and-line sector. No later than November 1, NMFS would calculate the amount of unused halibut PSC by one of the hook-and-line sectors for the remainder of the year. The projected amount of halibut PSC would be made available to the other hook-and-line sector for the remainder of that fishing year.

VII. Pacific Cod Sideboard Limits in the GOA

NMFS would recalculate several Pacific cod sideboards for the Western and Central GOA regulatory areas. The Council recommended sideboard allocations for the non-exempt AFA CVs and non-AFA crab vessels that would supersede the inshore/offshore processing sideboards established under the AFA and Crab Rationalization Program. These sideboards would be calculated annually as part of the harvest specification process. Non-exempt AFA CV sideboards would be recalculated by combining the inshore and offshore sideboards into a single account in the respective Western and Central GOA regulatory areas. In recent years, offshore sideboard allocations have not been fully harvested while inshore allocations are typically fully utilized. By combining the two sideboard categories into a single sideboard for each regulatory area, the Council’s recommendation was intended to make the offshore sideboard allocation available to the CVs historically associated with the inshore processing components (See Table 11 of this preamble).

Although this combination would simplify the catch accounting of sideboard allocations,

the Council declined to recommend similar sideboard allocations for the non-AFA crab vessel fishery because the inshore and offshore sideboards are typically fully harvested. A combination of the inshore and offshore sideboards is likely to result in increased competition and decrease stability in this fishery. Instead, this action would recalculate non-AFA crab vessel sideboards as separate C/P and CV sideboards for each gear type. The Council and NMFS recognize that the proposed non-AFA crab vessel sideboards could result in CV trawl, hook-and-line, and jig allocations that are too small to support directed fisheries for Pacific cod in these regulatory areas.

Table 11. Example calculation of the GOA Pacific cod sideboards for AFA CVs and non-AFA crab vessels recalculated by combining inshore and offshore sideboards into a single sideboard percentage for each regulatory area; non-AFA crab vessel sideboards also calculated by gear and operation type.

AFA CV Sideboards			
Regulatory Area	% Sideboard of TAC	2011 Estimated sideboard mt	
		A Season	B Season
Western GOA	13.31	1,820	1,213
Central GOA	6.92	1,676	1,117
Non-AFA Crab Sideboards			
	% Sideboard of TAC	2011 Estimated sideboard mt	
		A Season	B Season
Western GOA			
Hook-and-line CV	0.03	4	3
Pot CV	8.16	1,116	744
Trawl CV	0.60	82	55
Hook-and-line C/P	0.15	21	14
Pot C/P	0.64	87	58
Total C/P	0.79	108	72
Total CV	8.80	1,202	802
Total	9.58	1,310	874
Central GOA			
Trawl CV	0.10	24	16
Hook-and-line CV	0.01	2	2
Jig CV	*	*	*
Pot CV	3.54	857	572
Hook-and-line C/P	*	*	*
Pot C/P	0.92	223	149
Total C/P	*	*	*
Total CV	*	*	*
Total	4.64	1124	749

* These data are considered confidential under the MSA and other Federal laws and are not included in the table.

In October 2008, the Council recommended Amendment 34 to the FMP. NMFS published the notice of availability for Amendment 34 on March 14, 2011 (76 FR 13593). NMFS published the proposed rule to implement Amendment 34 on March 28, 2011 (76 FR 17088). If approved, this action would amend the Crab Rationalization Program to exempt additional fishery participants from GOA Pacific cod sideboard limits. Under the Program, five vessels and five LLP licenses are exempt from GOA Pacific cod sideboard limits established for the non-AFA Crab vessels. These vessels and groundfish LLP licenses qualified for the exemption in part because of their historic dependence on the GOA Pacific cod fishery. Therefore under current regulations, these vessels are able to participate in the GOA Pacific cod fishery unrestricted by the sideboard limit. The exempt non-AFA crab vessels do not have to stop fishing when the GOA Pacific cod sideboard limit is reached and may continue to fish as long as directed fishing for GOA Pacific cod is open. Although Amendment 34 would exempt three additional non-AFA crab vessels from the GOA Pacific cod sideboard limits this action should not affect the modifications to the sideboard limits proposed under this action, except to reduce the number of vessels fishing under the sideboard restrictions.

VIII. Community Protection Measures

In 1992, the inshore/offshore processing allocations were established under Amendment 23 to the FMP (57 FR 23321; June 3, 1992) and were intended to prevent one processing sector, such as C/Ps, from preempting another, such as shoreside processors. The inshore/offshore processing allocations enabled vessels and facilities operators to better plan their annual harvest and processing activity. These provisions protected the inshore processing component from competition by the offshore fleet. If approved, Amendment 83 would supersede the inshore/offshore allocations with sector allocations for the Western and Central GOA.

A. Proposed Community Protection Provisions

The Council recognized the potential for a shift in the processing and delivery patterns in the GOA Pacific cod fishery and included community protection provisions as part of Amendment 83. If implemented this action would promote stability in the distribution of catch among the processing sectors by limiting the amount of Pacific cod processed by vessel currently classified as offshore processors: motherships, C/Ps receiving deliveries over the side, and any floating processor that does not meet the definition of a stationary floating processor in § 679.2. This action would retain restrictions established under the inshore/offshore system to prohibit stationary floating processors from engaging in mothership activity in more than one geographic location in the GOA, or operating as a C/P in the GOA during the same calendar year. In addition, this proposed rule would establish various processing caps as part of the new sector allocations in the Western and Central GOA. Without these restrictions and processing caps, owners and operators of vessels receiving deliveries of Pacific cod could shift historic processing delivery patterns away from communities historically depended on processing activity. This proposed action is intended to retain the community participation in the processing of Pacific cod established by the inshore/offshore regulations.

If implemented, this action would establish provisions to limit the amount of Pacific cod processed by motherships and other vessels receiving deliveries of Pacific cod from other vessels for processing in the GOA. Under this action, vessels would be prohibited from receiving deliveries of groundfish in the Central GOA where there has been no mothership activity since 2000. In the Western GOA, NMFS would prohibit motherships from processing a greater portion of Pacific cod than during the inshore/offshore management program. If implemented, vessels (e.g. processors that do not meet the definition of a stationary floating processor) that

receive deliveries of groundfish for processing would be restricted to processing two percent of the Western GOA Pacific cod TAC. Although this action does not establish a mothership TAC allocation as part of this action, NMFS would close deliveries to mothership vessels in the Western GOA when the annual two percent processing cap is predicted to be reached. Pacific cod harvested as direct or indirect catch and delivered to another vessel for processing would be debited against the harvesting vessel's operational type and or gear type allocation, as described in section IX of this preamble.

NMFS also propose separate processing caps for mothership vessels operating within specific communities within the Western and Central GOA. This action is intended to provide CV operators with more options for making deliveries and to provide incentives for additional processors to operate within the marine municipal boundaries of specific coastal communities in the Western and Central GOA that qualify under the community quota entity (CQE) program.

B. Description of Community Quota Entity (CQE) Communities

The Council established the CQE program to ensure specified coastal communities have access to and sustain participation in commercial fisheries. To participate in the CQE program, each community must meet the following criteria—fewer than 1,500 residents; documented historical participation in the halibut or sablefish fisheries; direct access to saltwater on the GOA; no road access to a larger community; and be listed in Table 21 to 50 CFR part 679. The final rule implementing the CQE program was published in the Federal Register on April 30, 2004 (69 FR 23681).

As of April 29, 2011, 24 CQE non-profits corporations represent 24 unique Alaskan communities. Communities that are not identified in Table 21 to 50 CFR part 679 must be recommended by the Council to be approved for participation in the program. A regulatory

change to 50 CFR Table 21 is required to add or remove an eligible CQE community. To be to receive benefits under the program an eligible community must form a non-profit cooperation, under the applicable State laws, and complete an application to NMFS. If approved, each CQE applicant must annually submit a report to NMFS summarizing the relevant activities of the non-profit cooperation.

NMFS is proposing to allow federally permitted CV and C/P vessels that do not meet the definition of stationary floating processor, and that do not harvest groundfish off GOA in the same calendar year, to operate as floating processors within the marine municipal boundaries of Western and Central GOA CQE communities. Such vessels would be permitted to process up to three percent of the Western GOA and up to three percent of the Central GOA Pacific cod TACs. NMFS would authorize vessels to receive deliveries and process groundfish in multiple CQE communities within a calendar year. This community protection measure is intended to promote new markets for processing groundfish in communities where there is currently no shoreside processor.

NMFS is proposing to permit eligible vessels to process groundfish in CQE communities that provide certified municipal land and water boundaries to the State of Alaska Department of Commerce, Community, and Economic Development (DCED). Community boundaries are defined as the certified municipal land and maritime boundaries provided to the DCED. Documentation of the established municipal boundaries, including CQE communities with certified municipal boundaries, can be found on the DCED web site at <http://dcra.commerce.alaska.gov/DCBD/municipal%20Certificates/Cities/>. Tying processing activity to Western and Central GOA CQE communities provides economic benefits from any increase in this activity to these communities (i.e., tax revenues). Communities with certified

municipal maritime boundaries would be eligible to receive tax revenues based on the value of the processing activity.

Cities and boroughs are considered municipalities by the State. All communities subject to this action are within a municipal boundary. Some communities are municipalities within municipal borough boundaries. Whether a community is a municipality within a municipal borough or is not is important for tax revenues sharing purposes. Cities that are municipalities are guaranteed either 25 or 50 percent, depending on municipal status, of State fisheries taxes collected within their boundaries. Allowing motherships to operate in State waters within the boundaries of municipalities that levy taxes may have implications for employment in communities with processors, but mandating activity inside taxation zones ensures that communities will realize tax revenues similar to those collected without this action. During deliberations on Amendment 83, the Council and NMFS noted that many communities eligible to participate under the CQE program do not have certified maritime boundaries; however, these CQE communities could elect to apply, under the process established by the State, to certify new or to revise municipal land and maritime boundaries in order to participate in these community protection measures.

This proposed action would permit eligible vessels to operate in the Western and Central GOA within the boundaries of municipalities eligible to participate in the CQE program. The owners or operators of motherships or other floating processors that are not stationary floating processors, defined at § 679.2, could apply for an FPP with a CQE floating processor endorsement. Under this proposed action, federally permitted vessels that receive and process groundfish from other vessels, and have not been used to harvest groundfish off Alaska during the same calendar year (i.e., motherships) could temporarily process groundfish within the

municipal boundaries of a Western or Central GOA CQE community. This action would retain established regulations that restrict the owners and operators of vessel from possessing both an FFP and an FFP simultaneously, as described in section II.A.3 of this preamble. Retaining this requirement ensures that federally permitted vessels cannot participate in the Pacific cod fishing as both a SFP and a CQE floating processor in the same calendar year in the GOA. However, owners and operators of a vessel permitted with an FFP and a mothership endorsement that do not harvest groundfish in the GOA in a calendar year can surrender their FFP within a fishing year and apply for an FFP with a CQE endorsement. Exempting motherships from regulations intended to restrict harvesting vessels from surrendering their FFP would ensure that vessels exclusively engaged in mothership activity in the GOA could participate in the fisheries as both a mothership and CQE floating processor in the same calendar year, as described in section IX.A of this preamble.

To promote compliance with these community protection provisions, NMFS would establish several prohibitions to monitor and enforce the new processing caps. Although, this proposed rule would not limit the number of CQE communities at which a permitted floating processor may operate, NMFS would establish regulations to ensure that the processing activity of motherships occurs within the maritime boundaries of CQE communities and is accurately accounted against the appropriate processing caps. NMFS would require VMS on all vessels receiving deliveries of groundfish in the Western and Central GOA (e.g. Federal reporting areas 610, 620, or 630) during a directed Pacific cod fishing season, as described in more detail in section X of this preamble. Similarly, vessels would be prohibited from delivering Pacific cod harvested in the Western or Central GOA to be processed on a vessel in a GOA regulatory area other than regulatory area that the harvest occurred. Processing caps are assigned based on TAC

allocations to the Western and Central GOA regulatory areas and therefore would need to be accounted accurately to ensure that regional processing caps are not exceeded.

Two subsequent actions by the Council are likely to expand the scope of the CQE program. First is the GOA fixed gear recency action that the Council approved in April 2009; effective on April 21, 2011 (76 FR 15826). One purpose of the fixed gear recency action is to promote community protection measures at a level that would impose minimal impact on historic catch shares of recent participants. This action, adds non-severable, gear-specific Pacific cod endorsements to fixed gear licenses that qualify under the landings thresholds, effectively limiting entry into the directed Pacific cod fisheries in Federal waters in the Western and Central GOA. The Council balanced the intent of preventing future entry of latent fixed gear groundfish licenses into the Pacific cod fisheries with retaining opportunities for CQE communities dependent on access to a range of fishing resources.

The CQE component of the fixed gear recency action allows each of the communities eligible under the CQE program in the Western and Central GOA to request a number of fixed gear and Pacific cod-endorsed licenses equal to the number currently held by residents of the community that are estimated to be removed under the fixed gear recency action under a 10 mt landing threshold, or two licenses, whichever is greater. The licenses issued to CQEs are non-transferable and have a specified MLOA of less than 60 feet for each vessel. CQEs are issued licenses for the area of the community they represent (Western or Central GOA). Licenses issued to CQEs located in the Western GOA would be endorsed only for pot gear. CQE communities in the Central GOA have the option to notify NMFS what proportion of their LLP licenses would have a pot endorsement or a hook-and-line endorsement.

Under this proposed action, vessel owners and operators would need to apply for a CQE

floating processor endorsement. This would require changes to the FPP application that may require a permit holder to amend their existing FPP. For example, permit holders would be prohibited from possessing both a stationary floating processor and a CQE floating processor endorsement on their FPP; therefore, vessel owners and operators currently permitted to operate as a stationary floating processor might need to amend their FPP to remove the stationary floating processor endorsement and add a CQE floating processor endorsement. Similarly, permit holders with a mothership FPP endorsement choosing to operate as a CQE floating processor would need to surrender their FPP and apply for an FPP with the appropriate endorsements.

In addition, vessels operating as CQE floating processors would need to meet Federal monitoring and reporting requirements. In order for Pacific cod harvest to accrue against the delivery vessel's sector allocation, CQE floating processors in the Western and Central GOA would be required to submit accurate and timely reports via eLandings. Such requirements are necessary for NMFS to manage the Pacific cod harvest at or below TAC in each GOA regulatory area and to manage processing caps both inside and outside of CQE municipal boundaries in the Western GOA.

Secondly, the Council is considering proposals that would amend the existing list of CQE communities at Table 21 to 50 CFR part 679 to add up to three communities to the list of eligible communities in the GOA. At its February 2010 meeting, the Council reviewed a proposal that would amend the existing CQE program to add one community, Cold Bay, in the Western GOA. The two other communities under consideration, Game Creek and Naukati Bay, are located in the Eastern GOA and would not be directly regulated under this provision. If all the qualifying criteria are met, then adding these communities to the list of eligible municipalities would

expand the scope of the community protection provisions of this action.

C. Definition of Stationary Floating Processor

Under the proposed action, NMFS would retain several provisions regulating stationary floating processors in the GOA under the inshore/offshore allocation, including prohibited at 50 CFR 679.7(a)(7). NMFS would continue to require that stationary floating processors be limited to processing groundfish at a single geographic location during a given year to promote stability to the GOA Pacific cod fisheries. Similarly, this action would retain the regulatory provisions that prohibit a vessel from operating as a stationary floating processor for Pacific cod in the GOA and as an AFA C/P or AFA mothership in the BSAI during the same year, or as a C/P or mothership in the GOA during the same year to maintain participation in the fisheries at historic levels.

As part of this proposed action, NMFS would revise the definition of inshore component in the GOA to remove references to processing Pacific cod in the Western and Central GOA. The Council recommended revising other regulations governing stationary floating processors to preserve the processing patterns established during the inshore/offshore allocations. Therefore, NMFS also would modify the definition of stationary floating processor (1) to require a stationary floating processor in the Western and Central GOA to process Pacific cod only at a single geographic location in State waters in a given year, (2) to prohibit a stationary floating processor in the Western and Central GOA from operating under the authority of an FFP in the GOA or under an FFP with CQE floating processor endorsement during the same calendar year.

IX. License Requirements

A. Participants in Parallel Fisheries

NMFS proposes to limit entry by federally permitted vessels into the parallel waters fishery. If Western or Central GOA Pacific cod sector allocations are established, parallel waters activity by federally permitted vessel operators who do not hold LLP licenses is likely to erode the catches of historical participants who contributed catch history that helped determine the sector allocations and who depend on the GOA Pacific cod resource. Vessels fishing in Federal waters are required to hold an LLP license with the appropriate area, gear, and species endorsements, but vessels fishing in parallel State waters are not required to hold an LLP license. The Council recommendation would not allow federally permitted vessels that do not have LLP licenses to participate in the Western or Central GOA Pacific cod parallel fishery adjacent to the Western or Central GOA regulatory areas, to prevent any such encroachment. In addition, operators of pot, hook-and-line, or trawl vessels who hold an LLP license or an FFP would be required to have the appropriate gear, area, and species endorsements on the LLP license and FFP in order to participate in the Western or Central GOA Pacific cod parallel waters fisheries. Furthermore, federally permitted vessel operators would be required to adhere to Federal seasonal closures and sector allocation closures while targeting Pacific cod in parallel waters. If unrestricted entry into the parallel fisheries were allowed, the objective of the proposed action, to increase stability in the Pacific cod fishery in the GOA, might not be achieved.

NMFS also proposes a regulatory limit on the number of times each FFP with Pacific cod endorsements in the GOA can be reactivated during the 3-year term of the permit. Operators of vessels designated on an FFP are subject to NMFS observer, VMS, and recordkeeping and reporting requirements while fishing in Federal and State waters for groundfish. The loss of fisheries records due to vessels surrendering an FFP, while targeting Pacific cod in State waters, could degrade the quality of information available to manage the Pacific cod fishery and may

lead to increased competition within a sector and among sectors prosecuting the Pacific cod fishery within State waters. To prevent operators from circumventing these requirements, operators with a Pacific cod endorsement, a GOA area designation, a trawl, hook-and-line, pot, or jig gear designation, and a C/P or CV operation type designation would be precluded from removing these designations from the FFP, and if surrendered, each FFP would be limited to one reactivation during the 3-year term of the permit.

The owners and operators of vessels that do not harvest groundfish in the GOA and are endorsed as motherships on their FFP would be exempt from requirements limiting the reactivation of a surrendered permit. Vessels engaged solely in mothership activity could surrender their FFP multiple times in the 3-year term and would continue to be eligible for a reissued FFP. If implemented this exemption would enable motherships to surrender their FFP and operate as a CQE floating processor under the authority of an FFP in the same year. There is no limit on the times an FFP can be reissued, thus a mothership vessel could process Pacific cod up to the Western GOA processing cap and the Western and Central GOA CQE floating processing cap in the same year and alternate between FFP and FFP multiple times in a 3-year permitting cycle. However, to account for Pacific cod processed under these processing caps, NMFS would require vessels receiving groundfish from other vessels for processing to have an operational VMS, as described in section X of this preamble.

This action would not restrict an FFP holder from removing Pacific cod species endorsements from their FFP. Currently, an FFP holder can remove the species endorsement at anytime during the 3-year term of the FFP without surrendering the FFP. Vessels without a Pacific cod species endorsement are not required to have an operational VMS onboard while targeting other fisheries during the GOA Pacific cod fishing seasons but NMFS would continue

to require vessels to meet all observer and reporting requirements. The Council noted that license holders typically amend FFPs to remove the species endorsements to relieve the VMS requirements while targeting salmon within State waters, and that if this action is implemented, those vessels would be prohibited from targeting Pacific cod without the proper endorsements.

B. Western and Central GOA Catcher Vessel Endorsements

NMFS is proposing that eligible C/P LLP license holders make a one-time election to receive an additional Western GOA CV and/or Central GOA CV endorsement for Pacific cod. C/P license holders are eligible if they made at least one Pacific cod landing while operating as a CV under the authority of the C/P endorsement on their LLP license from 2002 through 2008. The Council recommended this action to preclude operators from fishing off both the C/P and CV allocations with hook-and-line or trawl gear types. Otherwise, a C/P operator could fish off the hook-and-line C/P or trawl C/P allocation until it was fully harvested, and then could opportunistically continue to fish as a CV, if the hook-and-line or trawl CV allocation had not yet been fully harvested. The potential for such an outcome is inconsistent with the Council's objective to bring stability to the fishery through sector allocations and would disadvantage the CVs who would not be able to fish off of the C/P Pacific cod allocation.

LLP license holders with C/P endorsements not electing to add a CV endorsement would have all incidental and direct catch of Pacific cod accrued against the C/P allocation. However, this action would not preclude a C/P vessel from operating as a CV. All Pacific cod harvested while a vessel is operating as a CV would be counted against the C/P allocation for that regulatory area.

LLP license holders electing to add a CV endorsement for the Western or Central GOA would have all Pacific cod catch, incidental and direct, accrue against the CV allocation. To

protect communities historically invested in the inshore sector under the inshore/offshore split, C/Ps electing to add a CV endorsement in the Western or Central GOA would be prohibited from acting as a C/P in the directed Pacific cod fishery. These vessels would, by default, depend on the components of the Pacific cod fishery traditionally associated with the inshore processing sector. LLP license holders electing to add a CV endorsement would retain their C/P endorsements in other directed fisheries; however, their incidental catch of Pacific cod in those fisheries would accrue against the CV allocation for that gear type and regulatory area. This action would not preclude operators from using more than one gear type to participate in the GOA Pacific cod fishery during a given season or year. For example, vessel operators are expected to use both trawl and pot gear in the GOA Pacific cod fishery during a given season or year, if the operator has the required LLP license and FFP endorsements.

The NMFS Restricted Access Management Program (RAM) would continue to oversee permits issued under the LLP. RAM will notify eligible C/Ps of the one-time election opportunity to add a Western GOA or Central GOA CV Pacific cod endorsement on an LLP license. Although the election is voluntary and no deadline for requesting the additional endorsements would be established under this action, interested vessel owners or operators would need to notify RAM in writing of their desire to add each additional endorsement.

X. Monitoring and Enforcement

This proposed rule would not change any of the observer requirements for the GOA Pacific cod fisheries, found in regulations at § 679.50. However, the Council took action in October 2010 to restructure the observer program for vessels and processors that are determined to need less than 100% observer coverage in the federal fisheries, including sectors of the fishery such as vessels less than 60' length overall (LOA). The goals of the restructured observer

program are to improve observer data quality, increase equity in the cost and burden of carrying an observer among the industry, and increase NMFS' ability to be flexible in responding to current and future management needs of individual fisheries. The restructured observer program would remove observer coverage requirements based on vessel length and processing volume and eliminate all exemptions from observer coverage. For example, all GOA trawl CVs regardless of length (except those participating in the Central GOA rockfish fishery), would participate in a restructured program where NMFS contracts with service providers to deploy observers in a randomized fashion. Vessels and processors included in the restructured program would pay an exvessel value-based fee on their groundfish and halibut landings to pay for the observer coverage. NMFS anticipates implementing the restructured observer coverage requirements in either 2013 or 2014, depending on the availability of Federal funding for the start-up year.

The GOA Pacific cod fisheries are managed as a limited access race for fish, with fleet-wide TACs in the Western, Central, and Eastern GOA, as described in more detail in section II of this preamble. If the Council's recommendations under Amendment 83 are implemented, the monitoring and enforcement of seasonal sector allocations and processing caps in the Western and Central GOA will supersede the inshore/offshore system. Inseason management of the Pacific cod fisheries in the Western and Central GOA would require NMFS to monitor catch accruing against 26 seasonal TACs and three processing caps. In the Eastern GOA NMFS would continue to monitor and enforce the two annual inshore/offshore allocations of Pacific cod. Furthermore, if approved, this action would require NMFS to manage two additional GOA-wide allocations of hook-and-line halibut PSC limit, which would be divided between C/Ps and CVs, and also apportioned seasonally. In order to ensure proper catch accounting under the proposed

sector allocations, NMFS would prohibit deliveries of Pacific cod harvested in the GOA to a vessel for processing that is located in a different regulatory area.

To adequately monitor and enforce the community protection provisions described in section VIII of this preamble, NMFS would require that all vessels receiving deliveries for processing must use VMS. Currently, VMS requirements apply to CVs and C/Ps that hold an FFP with a pollock, Pacific cod, or Atka mackerel species endorsement on their FFP, while vessels that solely process fish are not required to hold an FFP or use VMS while operating in the GOA. NMFS recognizes that monitoring and enforcing the various processing caps and geographic restrictions proposed under this action would require additional monitoring tools. Proposed requirements that floating processors operate within the municipal boundaries of a CQE community may not be practicable unless these floating processors are required to use VMS. Therefore, NMFS proposes to require that all vessels receiving deliveries from other vessels for processing in the Western and Central GOA (e.g. Federal reporting areas 610, 620, or 630) have an active VMS system while processing groundfish during a directed Pacific cod fishery.

Monitoring and enforcement under Amendment 83 are described in more detail in sections 2.2.8 and 2.3.3 of the EA/RIR/IRFA for this action (see ADDRESSES).

XI. Summary of Regulatory Changes

This action proposes the following changes to the existing regulatory text at 50 CFR parts 679 and 680:

- Revise references to the inshore/offshore Pacific cod fishery in the Western and Central GOA throughout 50 CFR Part 679;
- Modify existing regulations for surrendering and amending FFPs at § 679.4;

- Prohibit vessels from participating in the parallel fishery unless the vessel has the required FFP and LLP endorsements;
- Add an FPP CQE floating processor endorsement, and a new Western and Central GOA CV endorsement on LLP licenses at § 679.4;
- Add prohibitions necessary to monitor and enforce community protection provisions for processing entities in the Western and Central GOA at § 679.7;
- Establish seasonal Pacific cod TAC allocations by sector in the Western and Central GOA regulatory areas, at § 679.20;
- Modify existing regulations for assigning halibut PSC limit allotments at § 679.21;
- Add regulations to implement operational, vessel length, and gear type Pacific cod TAC allocations and reapportionments in the Western and Central GOA at § 679.20;
- Modify existing regulations to include new jig seasons and remove expired regulations at § 679.23;
- Add requirement for VMS on all vessels engaged in mothership activity in the Western and Central GOA at § 679.28; and
- Add gear type specifications for non-AFA crab sideboard ratios at § 680.22.

Other Proposed Regulatory Amendments

This proposed rule would remove and reserve unnecessary regulations at § 679.23(d)(4). This paragraph established directed Pacific cod fishing seasons that expired December 31, 2002. One correction would also be made to regulations currently at § 679.4(b)(4)(ii)(a) to remove a reference “to the permit holder of record”. The proposed modification would clarify that a surrendered FFP may be reissued to a person other than the permit holder of record, should the vessel owner change.

XII. Classification

Pursuant to sections 304(b) and 305(d) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the MSA, and other applicable law, subject to further consideration of comments received during the public comment period.

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

Regulatory Impact Review (RIR)

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. The RIR considers all quantitative and qualitative measures. A copy of this analysis is available from NMFS (see ADDRESSES). Amendment 83 was chosen based on those measures that maximized net benefits to the affected participants in the GOA Pacific cod fisheries. Specific aspects of the RIR are discussed below in the initial regulatory flexibility analysis (IRFA) section.

Initial Regulatory Flexibility Analysis (IRFA)

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the proposed action, why it is being considered, and the legal basis for this proposed action are contained at the beginning of this section and in the SUMMARY section of the preamble and are not repeated here. A summary of the analysis follows. A copy of the complete analysis is available from NMFS (see ADDRESSES).

Number and Description of Small Entities Regulated by the Proposed Action

The proposed action directly regulates CVs and C/Ps that participate in the Pacific cod

fisheries in the GOA. The number of small entities potentially impacted by the proposed action was estimated by calculating 2009 gross earnings for CVs, and 2009 first wholesale revenues for C/Ps, from their respective participation in all commercial fisheries in and off Alaska. Earnings estimates for 2010 are not currently available.

In 2009, 445 catcher vessels retained Pacific cod in the GOA, including vessels that did not participate in the directed federal fisheries, and only had incidental catch of Pacific cod. Forty-five of these catcher vessels were either members of AFA cooperatives and, as such, are not considered small entities for the purpose of the RFA, or had annual gross revenues of at least \$4 million. The remaining 401 catcher vessels are all considered small entities. In 2009, forty-one catcher processors retained Pacific cod in the GOA, and 7 of these vessels are estimated to be small entities.

In addition, five processing entities would be directly regulated by this proposed action. A review of processor activity from 2002 through 2010 revealed that five active processing entities own seven stationary floating processors and four motherships that have participated in the GOA Pacific cod fisheries. In the absence of detailed employment data, size determinations were based on a staff review of known ownership information and knowledge of Alaska processing firms. On this basis, nine of these vessels are not considered small entities for the purpose of the RFA, because they appear to be owned by firms that exceed the “500 or more employees” threshold, when all their affiliates worldwide are included. NMFS estimates that two vessels, owned by two different processing entities, are small entities.

It is likely that additional CVs, C/P vessels, or processing entities are affiliated through partnerships, or in other ways, with other entities, and would be considered large entities for the purpose of this action, if more complete ownership information were available.

Duplicate, Overlapping, or Conflicting Federal Rules

No duplication, overlap, or conflict between this proposed action and existing Federal rules has been identified.

Description of Significant Alternatives that Minimize Adverse Impacts on Small Entities

The Council considered two alternatives for this action, along with a suite of “options” that could be adopted singularly or in combination. Alternative 1 is the no action alternative. The Western and Central GOA Pacific cod TACs would not be allocated among the various sectors, and the fisheries would continue to be managed as a limited access race for fish. Under Alternative 2, the Western and Central GOA Pacific cod TACs would be allocated among the various gear sectors and operation types. Allocations would be based on retained catch history over a series of years during 1995 through 2005, 2000 through 2006, 2002 through 2007, or 2002 through 2008, or upon other criteria. The action would have similar impacts on small and large entities. Allocations would stabilize catches of the sectors. Options to increase the jig sector allocation beyond historical catch levels would be advantageous to jig vessels, which are among the smallest entities participating in the fisheries. The jig allocation allows for potential growth in entry-level opportunities in the GOA Pacific cod fisheries. During 1995 through 2008, the jig sector harvested, on average, less than 1 percent of the Western and Central GOA Pacific cod TACs. This allocation could potentially increase to 6 percent of the Western and Central GOA TACs, but would not be expected to do so, in the foreseeable future. Nonetheless, this provision does explicitly recognize and accommodate the special circumstances of the group of small entities.

The Council considered, but rejected, options to establish separate allocations for trawl and hook-and-line C/Ps that have historically fished off the inshore TACs. Establishing distinct

inshore C/P allocations would protect harvests of smaller C/Ps, if combined with a provision to limit entry to the inshore processing component. Prior to removing the option to create distinct inshore C/P allocations, the Council reviewed data that showed that during most years, nearly all C/Ps less than 125 ft (45.7 m) (45.7 m) in length elected to fish inshore. Therefore, if C/P allocations were to be based on vessel length (e.g., vessels less than, and vessels greater than 125 ft (45.7 m) (45.7 m) in length), these allocations would be nearly identical to allocations based on catch by the inshore and offshore processing components. This would not serve the objectives for this action.

The Council considered options to assign mothership processing caps as high as 10 percent of the Western and Central GOA Pacific cod TACs. High processing caps would benefit mothership vessels that have traditionally processed little Pacific cod in the GOA. From 2002 through 2008, less than 2 percent of the Western GOA TAC had been processed annually by motherships, and no mothership processing activity had occurred in the Central GOA. The Council declined to increase processing caps above recent participation levels, because such a recommendation is inconsistent with the objectives of this action and could redistribute catch, imposing greater economic burdens on other directly regulated entities with documented dependence (i.e., recent catch history) of these resources.

Based upon the best available scientific data and information, none of the alternatives to the proposed action appear to have the potential to accomplish the stated objectives of the MSA and other applicable statutes (as reflected in the proposed action), while minimizing any significant adverse economic impact on small entities, beyond those achieved under the proposed rule.

Recordkeeping and Reporting Requirements

Implementation of the proposed action would require NMFS to modify the catch accounting system to track catch by each sector. However, vessels fishing off these allocations will simply have to report their catch to NMFS, as usual under the status quo, and catch will be deducted from the appropriate account by the Agency, in accordance with the proposed revisions to the catch monitoring and accounting program.

Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been approved by OMB. The collections are listed below by OMB control number.

OMB Control No. 0206

Public reporting burden per response is estimated to average 21 minutes for Federal Fisheries Permit application; and 21 minutes for Federal Processor Permit application.

OMB Control No. 0213

Public reporting burden per response is estimated to average 31 minutes for a Mothership Daily Cumulative Production Logbook.

OMB Control No. 0334

Endorsements to the License Limitation Program (LLP) license are mentioned in this rule; however, the public reporting burden for this collection-of-information is not directly affected by this rule.

OMB Control No. 0445

Public reporting burden is estimated to average 12 minutes for Vessel Monitoring System (VMS) check-in report; and 4 hours for VMS operation (includes installation, transmission, and maintenance).

For the reasons set out in the preamble, 50 CFR parts 679 and 680 are proposed to be amended as follows:

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

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

Authority: 16 U.S.C. 773 et seq.; 1801 et seq.; 3631 et seq.; Pub. L. 108-447

2. In § 679.2,

a. Add definition of “CQE Floating Processor; and

b. Revise the definitions of “Hook-and-line catcher/processor,” “Inshore component in the GOA,” “Mothership,” “Offshore Component in the GOA,” “Pot catcher/processor,” and “Stationary floating processor (SFP)” to read as follows:

§ 679.2 Definitions.

* * * * *

CQE floating processor means, for the purposes of processing Pacific cod within the marine municipal boundaries of CQE communities (see Table 21 of this part) in the Western or Central Gulf of Alaska Federal reporting areas 610, 620, or 630, a vessel not meeting the definition of a stationary floating processor in this section, that has not harvested groundfish in the Gulf of Alaska in the same calendar year, and operates on the authority of an FPP endorsed as a CQE floating processor.

* * * * *

Hook-and-line catcher/processor means a catcher/processor vessel that is named on a valid LLP license that is noninterim and transferable, or that is interim and subsequently becomes noninterim and transferable, and that is endorsed for any of the following areas: Bering

Sea, Aleutian Islands, and/or any area in the Gulf of Alaska; and endorsed for catcher/processor fishing activity, catcher/processor, Pacific cod, and hook-and-line gear.

* * * * *

Inshore component in the GOA means the following three categories of the U.S. groundfish fishery that process pollock harvested in the GOA or Pacific cod harvested in the Eastern GOA:

(1) Shoreside processors.

(2) Vessels less than 125 ft (45.7 m) (38.1 m) LOA that hold an inshore processing endorsement on their Federal fisheries permit, and that process no more than 126 mt per week in round-weight equivalents of an aggregate amount of pollock and Eastern GOA Pacific cod.

(3) Stationary floating processors that--

(i) Hold an inshore processing endorsement on their Federal processor permit;

(ii) Process pollock harvested in a GOA directed fishery at a single GOA geographic location in Alaska state waters during a fishing year; and/or,

(iii) Process Pacific cod harvested in the Eastern GOA regulatory area at a single GOA geographic location in Alaska state waters during a fishing year.

* * * * *

Mothership means:

(1) A vessel that receives and processes groundfish from other vessels; or

(2) With respect to subpart E of this part, a processor vessel that receives and processes groundfish from other vessels and is not used for, or equipped to be used for, catching groundfish; or

(3) For the purposes of processing Pacific cod within the marine municipal boundaries of

CQE communities (as defined in Table 21 to this part) in the Western or Central Gulf of Alaska, motherships include vessels with a CQE floating processor endorsements on their Federal processor permit that receive and process groundfish from other vessels.

* * * * *

Offshore component in the GOA means all vessels not included in the definition of “inshore component in the GOA” that process pollock harvested in the GOA, and/or Pacific cod harvested in the Eastern GOA.

* * * * *

Pot catcher/processor means a catcher/processor vessel that is named on a valid LLP license that is noninterim and transferable, or that is interim and subsequently becomes noninterim and transferable, and that is endorsed for Bering Sea, Aleutian Islands, and/or Gulf of Alaska catcher/processor fishing activity, catcher/processor, Pacific cod, and pot gear.

* * * * *

Stationary floating processor (SFP) means:

(1) A vessel of the United States operating as a processor in Alaska State waters that remains anchored or otherwise remains stationary in a single geographic location while receiving or processing groundfish harvested in the GOA or BSAI; and,

(2) In the Western and Central GOA Federal reporting areas 610, 620, or 630, a vessel that has not operated as a catcher/processor, CQE floating processor, or mothership in the GOA during the same fishing year; however, an SFP can operate as catcher/processor or mothership in the BSAI and an SFP in the Western and Central GOA during the same fishing year

* * * * *

3. In § 679.4,

- a. Redesignate (f)(2)(v) as (f)(2)(vi);
- b. Revise paragraphs (b)(4)(ii), (b)(4)(iii), (b)(5)(iv), (f)(1), (f)(2) introductory text, (f)(2)(i), (f)(2)(iii), and newly redesignated (f)(2)(vi); and
- c. Add paragraphs (f)(2)(v), (k)(10)(vii), and (k)(10)(viii) to read as follows:

§ 679.4 Permits.

* * * * *

(b) * * *

(4) * * *

(ii) Surrendered permit--(A) An FFP permit may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. Except as provided under paragraph (b)(4)(ii)(B) and (C) of this section, if surrendered, an FFP may be reissued in the same fishing year in which it was surrendered. Contact NMFS/RAM by telephone, locally at 907-586-7202 (Option #2) or toll-free at 800-304-4846 (Option #2).

(B) In the BSAI, NMFS will not reissue an FFP to the owner of a vessel named on an FFP that has been issued with endorsements for catcher/processor vessel operation type, pot or hook-and-line gear type, and the BSAI area, until after the expiration date of the surrendered FFP.

(C) In the GOA, NMFS will not reissue an FFP to the owner of a vessel named on an FFP that has been issued a GOA area endorsement and any combination of endorsements for catcher/processor operation type, catcher vessel operation type, trawl gear type, hook-and-line gear type, pot gear type, or jig gear type until after the expiration date of the surrendered FFP.

(iii) Amended permit--(A) An owner, who applied for and received an FFP, must notify NMFS of any change in the permit information by submitting an FFP application found at the

NMFS website at <http://alaskafisheries.noaa.gov>. The owner must submit the application as instructed on the application form. Except as provided under paragraph (b)(4)(iii)(B) and (C) of this section, upon receipt and approval of a permit amendment, the Program Administrator, RAM, will issue an amended FFP.

(B) In the BSAI, NMFS will not approve an application to amend an FFP to remove a catcher/processor vessel operation endorsement, pot gear type endorsement, hook-and-line gear type endorsement, or BSAI area endorsement from an FFP that has been issued with endorsements for catcher/processor operation type, pot or hook-and-line gear type, and the BSAI area.

(C) In the GOA, NMFS will not approve an application to amend an FFP to remove endorsements for catcher/processor operation type, catcher vessel operation type, trawl gear type, hook-and-line gear type, pot gear type, or jig gear type, and the GOA area.

(D) In the GOA, an FFP holder can amend an FFP to remove specific Pacific cod gear type endorsement(s) at any time during the 3-year term of the permit without surrendering the FFP.

(5) * * *

(iv) Area and gear information. Indicate the type of vessel operation. If catcher/processor or catcher vessel, indicate only the gear types used for groundfish fishing. If the vessel is a catcher/processor under 125 ft (45.7 m) (18.3 m) LOA that is intended to process GOA inshore pollock or Pacific cod harvested in the inshore component of the Eastern GOA, mark the box for a GOA inshore processing endorsement.

* * * * *

(f) * * *

(1) Requirement. No shoreside processor of the United States, stationary floating processor, or CQE floating processor described at (f)(2) of this section may receive or process groundfish harvested in the GOA or BSAI, unless the owner first obtains a Federal processor permit issued under this part. A Federal processor permit is issued without charge.

(2) Contents of an FPP application. To obtain an FPP, the owner must complete an FPP application and provide the following information (see paragraphs (f)(2)(i) through (vi) of this section) for each SFP, shoreside processor plant, and CQE floating processor to be permitted:

(i) New or amended permit. Indicate whether application is for a new or amended FPP; and if an amended permit, provide the current FPP number. Indicate whether application is for a shoreside processor, an SFP, or a CQE floating processor.

(ii) * * *

(iii) SFP information. Indicate the vessel name; whether this is a vessel of the United States; USCG documentation number; ADF&G vessel registration number; ADF&G processor code; the vessel's LOA (ft); registered length (ft); gross tonnage; net tonnage; shaft horsepower; homeport (city and state); and whether choosing to receive a GOA inshore processing endorsement. A GOA inshore processing endorsement is required in order to process GOA inshore pollock and Eastern GOA inshore Pacific cod.

(iv) * * *

(v) CQE floating processor information--(A) A vessel owner that applies to process groundfish harvested by another vessel within the marine municipal boundaries of a Western GOA or Central GOA CQE community (as defined in Table 21 to this part) under the authority of an FPP CQE floating processor endorsement must indicate: the vessel name; whether this is a vessel of the United States; USCG documentation number; ADF&G vessel registration number;

ADF&G processor code; vessel's LOA (ft); registered length (ft); gross tonnage; net tonnage; shaft horsepower; homeport (city and state); and whether choosing to receive a GOA inshore processing endorsement.

(B) The owner of the vessel must indicate if they harvested groundfish in the GOA or acted as an SFP in the GOA during the current calendar year.

(C) The owner of the vessel must indicate if they hold an FFP or an SFP endorsement on their FFP for the same vessel.

(vi) Signature. The owner or agent of the owner of the shoreside processor, SFP, or CQE floating processor must sign and date the application. If the owner is a company, the agent of the owner must sign and date the application.

* * * * *

(k) * * *

(10) * * *

(vii) Additional endorsements for groundfish license holders eligible to participate in the Western and/or Central GOA Pacific cod fisheries-- (A) Requirements. A license limitation groundfish license holder can elect to permanently add a catcher vessel endorsement for the Western and/or Central GOA if the license holder—

(1) Is operating under the authority of a groundfish license endorsed for Pacific cod in Western and Central GOA, as described at (k)(4)(vi) or (k)(10)(ii) of this section;

(2) Is endorsed to participate as a catcher/processor in the Western and/or Central GOA Pacific cod fishery; and,

(3) Made a minimum of one Pacific cod landing while operating as a catcher vessel under the authority of the catcher/processor license in Federal reporting areas 610, 620, or 630, from

January 1, 2002, through December 31, 2008.

(4) Or, is the holder of a license limitation groundfish license endorsed for trawl gear Western and/or Central GOA and made a minimum of one Pacific cod landing while operating as a catcher vessel under the authority of the catcher/processor license in Federal reporting areas 610, 620, or 630, from January 1, 2002 through December 31, 2008.

(B) Additional Central GOA and/or Western GOA catcher vessel endorsement. Any Holder of an LLP license that has a catcher vessel endorsement for the Western and/or Central GOA under (k)(10)(vii) of this section—

(1) Is prohibited, at § 679.7(k)(1)(iv)(B), from catching and processing Pacific cod onboard a vessel under the authority of that groundfish license in the directed Pacific cod fishery in the Western or Central GOA Federal reporting areas 610, 620, or 630;

(2) Will have all directed catch of Pacific cod harvested under the authority of that groundfish license accrue against the respective GOA regulatory area catcher vessel allocations; and,

(3) Will have all incidental catch of Pacific cod in the Western GOA or Central GOA Federal reporting areas 610, 620, or 630, harvested under the authority of that groundfish license accrue against the respective GOA regulatory area catcher vessel allocations.

(C) Eligible license holders not electing to add catcher vessel endorsement(s). Any holder of an LLP license that does not have a catcher vessel endorsement for the Western and/or Central GOA under (k)(10)(vii) of this section may participate in the Western GOA or Central GOA directed Pacific cod fishery as a catcher/processor or a catcher vessel; however, direct and incidental catch of Pacific cod in the Western GOA and Central GOA will accrue against the respective catcher/processor allocation.

(D) Multiple or stacked LLP licenses. A vessel that does not meet the requirements at (k)(10)(vii) of this section but does have multiple, stacked, LLP licenses and one of those stacked licenses is endorsed as a catcher/processor eligible to harvest Pacific cod in the Western GOA or Central GOA Federal reporting areas 610, 620, or 630, all catch will accrue against the catcher/processor sector allocation for that gear type.

(E) Catch history. NMFS will assign legal landings to each groundfish license for an area based only on information contained in the official record as described in paragraph (k)(10)(viii) of this section.

(viii) Catcher/processor participation in the Western GOA and Central GOA official record--(A) The official record will contain all information used by the Regional Administrator to determine the following:

(1) The number and amount of legal landings made under the authority of that license by gear type, and operational mode;

(2) All other relevant information necessary to administer the requirements described in paragraphs (k)(10)(vii)(A)(1) through (k)(10)(vii)(A)(3) of this section.

(B) The official record is presumed to be correct. A groundfish license holder has the burden to prove otherwise.

(C) For the purposes of creating the official record, the Regional Administrator will presume if more than one person is claiming the same legal landing, then each groundfish license for which the legal landing is being claimed will be credited with the legal landing;

(D) Only legal landings as defined in § 679.2 and documented on State of Alaska fish tickets or NMFS weekly production reports will be used to assign legal landings to a groundfish license.

(E) The Regional Administrator will specify by letter a 30-day evidentiary period during which an applicant may provide additional information or evidence to amend or challenge the information in the official record. A person will be limited to one 30-day evidentiary period. Additional information or evidence received after the 30-day evidentiary period specified in the letter has expired will not be considered for purposes of the initial administrative determination.

(F) The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 30-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the person fails to support the person's claims and is insufficient to rebut the presumption that the official record is correct, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 30-day evidentiary period. The IAD will indicate the deficiencies with the information, or the evidence submitted in support of the information. The IAD will also indicate which claims cannot be approved based on the available information or evidence. A person who receives an IAD may appeal pursuant to § 679.43. A person who avails himself or herself of the opportunity to appeal an IAD will receive a non-transferable license pending the final resolution of that appeal, notwithstanding the eligibility of that applicant for some claims based on consistent information in the official record.

* * * * *

4. In § 679.5,

a. Revise paragraphs (c)(6)(i), (c)(6)(v)(C), (e)(3)(iv)(B), (e)(6) introductory text, (e)(6)(i) introductory text, (e)(10)(ii), and (e)(10)(iii) introductory text; and

b. Add paragraph (e)(6)(i)(A)(12) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(c) * * *

(6) Mothership DCPL —(i) Responsibility. Except as described in paragraph (f)(1)(v) of this section, the operator of a mothership that is required to have an FFP under § 679.4(b), or the operator of a CQE floating processor that receives or processes any groundfish from the GOA or BSAI from vessels issued an FFP under § 679.4(b) is required to use a combination of mothership DCPL and eLandings to record and report daily processor identification information, delivery information, groundfish production data, and groundfish and prohibited species discard or disposition data. The operator must enter into the DCPL any information for groundfish received from catcher vessels, groundfish received from processors for reprocessing or rehandling, and groundfish received from an associated buying station documented on a BSR.

* * * * *

(v) * * *

(C) Vessel information. Name of mothership, or CQE floating processor as displayed in official documentation, FFP or FPP number, and ADF&G processor code.

* * * * *

(e) * * *

(3) * * *

(iv) * * *

(B) Groundfish catcher/processor, mothership or CQE floating processor. If a groundfish catcher/processor or mothership, enter the FFP number; if a CQE floating processor, enter FPP number.

* * * * *

(6) Mothership landings report. The operator of a mothership that is issued an FFP under § 679.4(b) or a CQE floating processor that receives groundfish from catcher vessels required to have an FFP under § 679.4 is required to use eLandings or other NMFS-approved software to submit a daily landings report during the fishing year to report processor identification information and the following information under paragraphs (e)(6)(i) through (iii) of this section:

(i) Information entered for each groundfish delivery to a mothership. The User for a mothership must enter the following information (see paragraphs (e)(6)(i)(A)(1) through (12) of this section) provided by the operator of a catcher vessel, operator or manager of an associated buying station, or information received from processors for reprocessing or rehandling product.

(A) * * *

(12) Receiving deliveries of groundfish in the marine municipal boundaries of a CQE community listed in Table 21 to this part.

* * * * *

(10)* * *

(ii) Mothership. The operator of a mothership that is issued an FFP under § 679.4, or the operator of a CQE floating processor that receives groundfish is required to use eLandings or other NMFS-approved software to submit a production report to record and report daily processor identification information, groundfish production data, and groundfish and prohibited species discard or disposition data.

(iii) Contents. eLandings autofills the following fields when creating a production report for a catcher/processor or mothership: FFP or FPP number, company name, ADF&G processor code, User name, email address, and telephone number. The User must review the autofilled

cells to ensure that they are accurate for the current report. In addition, the User for the catcher/processor or mothership must enter the information in paragraphs (e)(10)(iii)(A) through (N) of this section.

* * * * *

5. In § 679.7,

a. Revise paragraphs (a)(7)(vi), (viii) and (ix), (a)(15), and (k)(1)(iv); and

b. Add paragraphs (b)(4), (b)(5), (b)(6), (b)(7), and (k)(2)(ii) to read as follows:

§ 679.7 Prohibitions.

(a) * * *

(7) * * *

(vi) Except as provided in paragraph (k)(3)(iv) of this section, use a stationary floating processor with a GOA inshore processing endorsement to process pollock harvested in the GOA or Pacific cod harvested in the Eastern GOA in a directed fishery for those species in more than one single geographic location in the GOA during a fishing year.

* * * * *

(viii) Use a vessel operating under the authority of a groundfish license with a Pacific cod endorsement to directed fish for Pacific cod in the Eastern GOA apportioned to the inshore component of the GOA as specified under § 679.20(a)(6) if that vessel has directed fished for Pacific cod in the Eastern GOA apportioned to the offshore component of the Eastern GOA during that calendar year.

(ix) Use a vessel operating under the authority of a groundfish license with a Pacific cod endorsement to directed fish for Pacific cod in the Eastern GOA apportioned to the offshore component of the Eastern GOA as specified under § 679.20(a)(6) if that vessel has directed

fished for Pacific cod in the Eastern GOA apportioned to the inshore component of the GOA during that calendar year.

* * * * *

(15) Federal processor permit--(i) Receive, purchase or arrange for purchase, discard, or process groundfish harvested in the GOA or BSAI by a shoreside processor or SFP and in the Western and Central GOA regulatory areas, including Federal reporting areas 610, 620, and 630, a CQE floating processor, that does not have on site a valid Federal processor permit issued pursuant to § 679.4(f).

(ii) Receive, purchase or arrange for purchase, discard, or process groundfish harvested in the GOA by a CQE floating processor that does not have on site a valid Federal processor permit issued pursuant to § 679.4(f).

* * * * *

(b) * * *

(4) Catcher vessel restrictions--(i) Deliver Pacific cod harvested in the Western GOA or Central GOA regulatory area including Federal reporting areas 610, 620, or 630, to a vessel for processing in a GOA regulatory area other than the area in which the harvest occurred.

(ii) Deliver Pacific cod harvested in the Western GOA or Central GOA regulatory area, including Federal reporting areas 610, 620, or 630, to another vessel for processing unless the processing vessel carries an operable NMFS-approved Vessel Monitoring System that complies with the requirements in § 679.28(f).

(iii) Deliver Pacific cod harvested in the Western GOA or adjacent waters parallel directed fishery to a vessel for processing in excess of the processing limits established at § 679.20(a)(12)(iv) or (v), unless the processing vessel meets the definition of a stationary floating

processor at § 679.2.

(iv) Deliver Pacific cod harvested in the Central GOA or adjacent waters parallel directed fishery in excess of the processing limits established at § 679.20(a)(12)(v), unless the processing vessel meets the definition of a stationary floating processor at § 679.2.

(v) Deliver Pacific cod harvested in the Central GOA or adjacent waters parallel directed fishery to a vessel for processing, unless that vessel is endorsed as a CQE floating processor or stationary floating processor.

(5) Stationary floating processor restrictions--(i) Except as provided in paragraph (k)(3)(iv) of this section, to use a stationary floating processor to process Pacific cod at more than one single geographic location in the GOA during a fishing year if the Pacific cod was harvested in a Western or Central GOA directed fishery within Federal reporting areas 610, 620, or 630.

(ii) Operate as a stationary floating processor and as a catcher/processor during the same calendar year in the GOA.

(iii) Operate as a stationary floating processor and as a CQE floating processor or mothership during the same calendar year in the GOA.

(6) Parallel fisheries. Use a vessel designated or required to be designated on an FFP to catch and process Pacific cod from waters adjacent to the GOA when Pacific cod caught by that vessel is deducted from the Federal TAC specified under § 679.20(a)(12)(i)(A)(2) through (6) of this part for the Western GOA and § 679.20(a)(12)(i)(B)(2) through (7) of this part for the Central GOA unless:

(i) That non-trawl vessel is designated on both:

(A) An LLP license issued under § 679.4(k) of this part, unless that vessel is using jig

gear and exempt from the LLP license requirement under § 679.4(k)(2)(iii) of this part. Each vessel required to have an LLP license must be designated with the following endorsements:

(1) The GOA area designation adjacent to the parallel waters fishery where the harvest occurred; and

(2) A Pacific cod endorsement.

(B) An FFP issued under § 679.4(b) of this part with the following endorsements:

(1) The GOA area designation;

(2) An operational type designation;

(3) A gear type endorsement; and

(4) A Pacific cod gear type endorsement.

(ii) Or, that trawl vessel is designated on both:

(A) An LLP license issued under § 679.4(k) of this part endorsed for trawl gear with the GOA area designation adjacent to the parallel waters fishery where the harvest occurred, and

(B) An FFP issued under § 679.4(b) of this part with the following endorsements:

(1) The GOA area designation;

(2) An operational type designation;

(3) A trawl gear type endorsement; and

(4) A Pacific cod gear type endorsement.

(7) Parallel fishery closures. Use a vessel designated or required to be designated on an FFP to catch Pacific cod and retain from waters adjacent to the GOA when Pacific cod caught by that vessel is deducted from the Federal TAC specified under § 679.20(a)(12)(i)(A)(2) through (6) of this part for the Western GOA and § 679.20(a)(12)(i)(B)(2) through (7) of this part for the Central GOA if directed fishing for Pacific cod is not open.

* * * * *

(k) * * *

(1) * * *

(iv) Processing GOA groundfish--(A) Use a listed AFA catcher/processor to process any pollock harvested in a directed pollock fishery in the GOA and any groundfish harvested in Statistical Area 630 of the GOA.

(B) Use a listed AFA catcher/processor as a stationary floating processor for Pacific cod in the GOA and a catcher/processor during the same year.

* * * * *

(2) * * *

(ii) Processing GOA groundfish. Use a listed AFA mothership as a stationary floating processor for Pacific cod in the GOA and a mothership during the same year.

* * * * *

6. In § 679.20,

a. Revise paragraphs (a)(6)(ii), (a)(12), (b)(2)(ii), (c)(4)(ii); and

b. Add paragraphs (c)(7) and (c)(4)(iii) to read as follows:

§ 679.20 General limitations.

(a) * * *

(6) * * *

(ii) Eastern GOA Regulatory Area Pacific cod. The apportionment of Pacific cod in the Eastern GOA Regulatory Area will be allocated 90 percent to vessels harvesting Pacific cod for processing by the inshore component and 10 percent to vessels harvesting Pacific cod for processing by the offshore component.

* * * * *

(12) GOA Pacific cod TAC —(i) Seasonal allowances by sector. The Western and Central GOA Pacific cod TACs will be seasonally apportioned to each sector such that: 60 percent of the TAC is apportioned to the A season and 40 percent of the TAC is apportioned to the B season, as specified in § 679.23(d)(3).

(A) Western GOA Regulatory Area--(1) Jig sector. A portion of the annual Pacific cod TAC will be allocated to vessels with an FFP that use jig gear, as determined in the annual harvest specification under paragraph (c)(7) of this section, before TAC is apportioned among other non-jig sectors. Other Pacific cod sector allowances are apportioned after allocation to the jig sector based on gear type and operation type as follows:

Sector	Gear Type	Operation Type	Seasonal Allowances	
			A season	B season
(2)	Hook-and-Line	Catcher vessel	0.70%	0.70%
(3)	Hook-and-Line	Catcher/Processor	10.90%	8.90%
(4)	Trawl	Catcher vessel	27.70%	10.70%
(5)	Trawl	Catcher/Processor	0.90%	1.50%
(6)	Pot	Catcher Vessel and Catcher/Processor	19.80%	18.20%
(7)	Nontrawl	Any	0.00%	0.00%

(B) Central GOA Regulatory Area--(1) Jig sector. A portion of the annual Pacific cod TAC will be allocated to vessels with an FFP that use jig gear, as determined in the annual harvest specification under paragraph (c)(7) of this section, before TAC is apportioned among other non-jig sectors. Other Pacific cod sector allowances are apportioned after allocation to the jig sector based on gear type, operation type, and length overall as follows:

Sector	Gear Type	Operation Type	Length Overall in Feet	Seasonal Allowances	
				A season	B season
(2)	Hook-and-Line	Catcher vessel	<50	9.31552%	5.28678%
(3)	Hook-and-Line	Catcher vessel	≥50	5.60935%	1.09726%
(4)	Hook-and-Line	Catcher/Processor	Any	4.10684%	0.99751%
(5)	Trawl	Catcher vessel	Any	21.13523%	20.44888%
(6)	Trawl	Catcher/Processor	Any	2.00334%	2.19451%
(7)	Pot	Catcher Vessel and Catcher/Processor	Any	17.82972%	9.97506%
(8)	Nontrawl	Any	Any	0.00%	0.00%

(ii) Reapportionment of TAC--(A) The Regional Administrator may apply any underage or overage of Pacific cod harvest by each sector from one season to the subsequent season. In adding or subtracting any underages or overages to the subsequent season, the Regional Administrator shall consider the incidental catch and any catch in the directed fishery by each sector.

(B) Any portion of the hook-and-line, trawl, pot, or jig sector allocations determined by the Regional Administrator to remain unharvested during the remainder of the fishery year will be added to the catcher vessel sectors first. The Regional Administrator shall consider the capability of gear groups and sectors to harvest the reallocated amount of Pacific cod when reapportioning Pacific cod to other sectors.

(iii) Catch accounting--(A) Incidental Pacific cod harvested between the closure of the A season and opening of the B season shall be deducted from the B season TAC apportionment for that sector.

(B) Each license holder that is assigned an LLP license with a catcher/processor operation type endorsement that is not assigned a catcher vessel operation type endorsement under the provisions at § 679.4(k)(10)(vii)(A) and (B) shall have all incidental and direct catch of

Pacific cod deducted from the catcher/processor sector allocation and gear type designation corresponding to the gear used by that vessel.

(C) Holders of catcher/processor licenses assigned a Western GOA CV endorsement, under the provisions at § 679.4(k)(10)(vii)(A) and (B), shall have all incidental and direct catch of Pacific cod in the Western GOA deducted from the CV sector's allocation and gear type designation corresponding the gear used by that vessel in the Western GOA.

(D) Holders of C/P licenses eligible to, and electing to receive a Central CV endorsement, under the provisions at § 679.4(k)(10)(vii)(A) and (B), shall have all incidental and direct catch of Pacific cod in the Central GOA deducted from the CV sector's allocation and gear type designation corresponding the gear used by that vessel in the Central GOA.

(E) NMFS shall determine the length overall of a vessel operating in the Central GOA based on the length overall designated on the FFP assigned to that vessel.

(iv) Processing caps for FFP licensed vessels. In the Western GOA, no more than 2 percent of the total Pacific cod TAC allocated to the Western GOA regulatory area can be delivered for processing to vessels operating under the authority of an FFP.

(v) Processing caps for FFP licensed vessel operating as CQE floating processors. Harvesting vessels may deliver Pacific cod harvested in the directed Pacific cod TAC fishery, if the processing vessel receiving the Pacific cod---

(A) Does not meet the definition of a stationary floating processor at § 679.2;

(B) Is operating under the authority of an FFP license endorsed as a CQE floating processor;

(C) Is located within the marine municipal boundaries of a CQE community in the State waters adjacent to the Central or Western GOA as described in Table 21 to this part; and

(D) The total amount of Pacific cod received or processed by all CQE floating processors does not exceed---

(1) 3 percent of the total Western GOA Pacific cod TAC; or

(2) 3 percent of the total Central GOA Pacific cod TAC.

* * * * *

(b) * * *

(2) * * *

(ii) Pacific cod reapportionment. Any amounts of the GOA reserve that are reapportioned to the GOA Pacific cod fishery as provided by paragraph (b) of this section must be apportioned in the same proportion specified in paragraphs (a)(6)(ii) and (a)(12)(i) of this section.

* * * * *

(c) * * *

(4) * * *

(ii) GOA pollock. The annual harvest specifications will specify the allocation of GOA pollock for processing by the inshore component in the GOA and the offshore component in the GOA, and any seasonal allowances thereof, as authorized under paragraphs (a)(5) and (a)(6) of this section.

(iii) Eastern GOA Pacific cod. The annual harvest specifications will specify the allocation of Eastern GOA Pacific cod for processing by the inshore component and the offshore component, and any seasonal allowances thereof, as authorized under paragraph (a)(6) of this section.

* * * * *

(7) Western and Central GOA Pacific cod allocations. The proposed and final harvest specifications will specify the allocation of GOA Pacific cod among gear types and any seasonal allowances thereof, as authorized under paragraph (a)(12) of this section.

* * * * *

7. In § 679.21,

- a. Remove paragraph (d)(4)(iii)(B);
- b. Redesignate paragraph (d)(4)(iii)(C) as (d)(4)(iii)(B); and
- c. Revise newly redesignated paragraph (d)(4)(iii)(B), and paragraphs (d)(5)(iv) and

(d)(7)(ii), to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(d) * * *

(4) * * *

(iii) * * *

(B) Other hook-and-line fishery. Fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of groundfish and is not a demersal shelf rockfish fishery defined under paragraph (d)(4)(iii)(A) of this section, as follows---

(1) Catcher vessels using hook-and-line gear will be apportioned part of the GOA halibut PSC limit in proportion to the total Western and Central GOA Pacific cod allocations, where X is equal to annual TAC, as follows---

$$Total\ HAL\ PSC\ limit\ mt \times \frac{(1.4\%(X_{WGOA}) + 21.3\%(X_{CGOA}))}{((19.8\% + 1.4\%)(X_{WGOA}) + ((5.1\% + 21.3\%)(X_{CGOA}))}$$

(2) Catcher/processors using hook-and-line gear will be apportioned part of the GOA halibut PSC limit in proportion to the total Western and Central GOA Pacific cod allocations,

where X is equal to annual TAC, as follows---

$$\text{Total HAL PSC limit mt} \times \frac{(19.8\%(\mathbf{X}_{WGOA}) + 5.1\%(\mathbf{X}_{CGOA}))}{((19.8\% + 1.4\%)(\mathbf{X}_{WGOA})) + ((5.1\% + 21.3\%)(\mathbf{X}_{CGOA}))}$$

(3) No later than November 1, any halibut PSC limit allocated under paragraph (d)(4)(iii)(B) of this section not projected by the Regional Administrator to be used by one of the hook-and-line sectors during the remainder of the fishing year will be made available to the other sector.

(5) * * *

(iv) Seasonal apportionment exceeded. If a seasonal apportionment of a halibut PSC limit specified for trawl, hook-and-line, pot gear, and/or operational type is exceeded, the amount by which the seasonal apportionment is exceeded will be deducted from the respective apportionment for the next season during a current fishing year.

* * * * *

(7) * * *

(ii) Hook-and-line fisheries. If, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the three hook-and-line gear and operational type fishery categories listed under paragraph (d)(4)(iii) of this section will catch the halibut bycatch allowance, or apportionments thereof, specified for that fishery category under paragraph (d)(1) of this section, NMFS will publish notification in the Federal Register closing the entire GOA or the applicable regulatory area, district, or operation type to directed fishing with hook-and-line gear for each species and/or species group that comprises that fishing category.

* * * * *

8. In § 679.23,

- a. Remove and reserve paragraph (d)(4);
- b. Revise paragraph (d)(3)(i) introductory text; and
- c. Add paragraph (d)(3)(iii) to read as follows:

§ 679.23 Seasons.

* * * * *

(d) * * *

(3) * * *

(i) Hook-and-line or pot gear. Subject to other provisions of this part, directed fishing for Pacific cod with hook-and-line or pot gear in the Western and Central GOA Regulatory Areas is authorized only during the following two seasons:

* * * * *

(iii) Jig gear. Subject to other provisions of this part, directed fishing for Pacific cod with jig gear in the Western and Central GOA Regulatory Areas is authorized only during the following two seasons:

(A) A season. From 0001 hours, A.l.t., January 1 through 1200 hours, A.l.t., June 10 or when the jig A season allocation is reached, whichever occurs first;

(B) B season. From 1200 hours, A.l.t., June 10 through 2400 hours, A.l.t., December 31 or when the jig B season allocation is reached, whichever occurs first.

(4) [RESERVED]

* * * * *

9. In § 679.28,

- a. Revise paragraphs (f)(6)(iii) and (f)(6)(iv); and
- b. Add paragraph (f)(6)(v) to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(f) * * *

(6) * * *

(iii) You operate a vessel required to be federally permitted with non-pelagic trawl or dredge gear onboard in reporting areas located in the GOA or operate a federally permitted vessel with non-pelagic trawl or dredge gear onboard in adjacent State waters;

(iv) When that vessel is required to use functioning VMS equipment in the Rockfish Program as described in § 679.7(n)(3); or

(v) You operate a vessel in federal reporting areas 610, 620, or 630, and receive and process groundfish from other vessels.

* * * * *

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

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

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

11. In § 680.22,

a. Revise paragraph (d) introductory text to read as follows:

§ 680.22 Sideboard protections for GOA groundfish fisheries.

* * * * *

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

* * * * *

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Bcarls 1/8/10; through 7/19/10

Skelly 3/15/2011

Gaberle 3/24/2011, 5/10/2011

Gmerril 3/27/2011, 4/11/2011, 4/22/2011, 4/25/2011, 4/27/2011

Mfuruness 4/5/2011, 5/26/2011, 6-6-2011

Tpearson 4/5/2011

Kmilani 4/11/2011

Tbuck 4/5/2011

Jgaspar 4/20/2011

Odavis 4/22/2011, 5/25/2011, 6-3-2011

Jmondragon 4/25/2011

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Tmeyer 5/8/2011

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NMFS edits 6/1/2011

Jpollard 6_13_2011

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS 16 U.S.C. 1853

95-354, 99-659, 101-627, 104-297

(a) **REQUIRED PROVISIONS.**—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are—

(A) necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery;

(B) described in this subsection or subsection (b), or both; and

(C) consistent with the national standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify—

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and

(C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;

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(5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, charter fishing, and fish processing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, economic information necessary to meet the requirements of this Act, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors;

(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;

(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;

(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;

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(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of the conservation and management measures on, and possible mitigation measures for—

(A) participants in the fisheries and fishing communities affected by the plan or amendment;

(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants; and

(C) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery;

(10) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;

(11) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority—

(A) minimize bycatch; and

(B) minimize the mortality of bycatch which cannot be avoided;

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(12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;

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(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery, including its economic impact, and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors;

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(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate, taking into consideration the economic impact of the harvest restrictions or recovery benefits on the fishery participants in each sector, any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery and;

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(15) establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.

97-453, 99-659, 101-627, 102-251, 104-297

(b) DISCRETIONARY PROVISIONS.—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may—

(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to—

(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone [or special areas,]* or for anadromous species or Continental Shelf fishery resources beyond such zone [or areas]*;

(B) the operator of any such vessel; or

(C) any United States fish processor who first receives fish that are subject to the plan;

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(2)(A) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(B) designate such zones in areas where deep sea corals are identified under section 408, to protect deep sea corals from physical damage from fishing gear or to prevent loss or damage to such fishing gear from interactions with deep sea corals, after considering long-term sustainable uses of fishery resources in such areas; and

(C) with respect to any closure of an area under this Act that prohibits all fishing, ensure that such closure—

- (i) is based on the best scientific information available;
- (ii) includes criteria to assess the conservation benefit of the closed area;
- (iii) establishes a timetable for review of the closed area's performance that is consistent with the purposes of the closed area; and
- (iv) is based on an assessment of the benefits and impacts of the closure, including its size, in relation to other management measures (either alone or in combination with such measures), including the benefits and impacts of limiting access to: users of the area, overall fishing activity, fishery science, and fishery and marine conservation;

(3) establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the—

- (A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors);
- (B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and State safety and quality requirements; and
- (C) transshipment or transportation of fish or fish products under permits issued pursuant to section 204;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;

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(5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery and take into account the different circumstances affecting fisheries from different States and ports, including distances to fishing grounds and proximity to time and area closures;

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(6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account—

- (A) present participation in the fishery;
- (B) historical fishing practices in, and dependence on, the fishery;
- (C) the economics of the fishery;
- (D) the capability of fishing vessels used in the fishery to engage in other fisheries;
- (E) the cultural and social framework relevant to the fishery and any affected fishing communities;
- (F) the fair and equitable distribution of access privileges in the fishery; and
- (G) any other relevant considerations;

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(7) require fish processors who first receive fish that are subject to the plan to submit data which are necessary for the conservation and management of the fishery;

(8) require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;

(9) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region;

(10) include, consistent with the other provisions of this Act, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch;

(11) reserve a portion of the allowable biological catch of the fishery for use in scientific research;

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(12) include management measures in the plan to conserve target and non-target species and habitats, considering the variety of ecological factors affecting fishery populations; and

(14)[sic]¹⁵ prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

97-453, 104-297

(c) PROPOSED REGULATIONS.—Proposed regulations which the Council deems necessary or appropriate for the purposes of—

(1) implementing a fishery management plan or plan amendment shall be submitted to the Secretary simultaneously with the plan or amendment under section 304; and

(2) making modifications to regulations implementing a fishery management plan or plan amendment may be submitted to the Secretary at any time after the plan or amendment is approved under section 304.

¹⁵ So in original.

P.L. 109-479, sec. 104(b), MSA § 303 note

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EFFECTIVE DATES; APPLICATION TO CERTAIN SPECIES.—The amendment made by subsection (a)(10)¹⁶—

(1) shall, unless otherwise provided for under an international agreement in which the United States participates, take effect—

(A) in fishing year 2010 for fisheries determined by the Secretary to be subject to overfishing; and

(B) in fishing year 2011 for all other fisheries; and

(2) shall not apply to a fishery for species that have a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species; and

(3) shall not limit or otherwise affect the requirements of section 301(a)(1) or 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851(a)(1) or 1854(e), respectively).

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SEC. 303A. LIMITED ACCESS PRIVILEGE PROGRAMS.

16 U.S.C. 1853a

(a) **IN GENERAL.**—After the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, a Council may submit, and the Secretary may approve, for a fishery that is managed under a limited access system, a limited access privilege program to harvest fish if the program meets the requirements of this section.

(b) **NO CREATION OF RIGHT, TITLE, OR INTEREST.**—Limited access privilege, quota share, or other limited access system authorization established, implemented, or managed under this Act—

(1) shall be considered a permit for the purposes of sections 307, 308, and 309;

(2) may be revoked, limited, or modified at any time in accordance with this Act, including revocation if the system is found to have jeopardized the sustainability of the stock or the safety of fishermen;

(3) shall not confer any right of compensation to the holder of such limited access privilege, quota share, or other such limited access system authorization if it is revoked, limited, or modified;

(4) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested by the holder; and

(5) shall be considered a grant of permission to the holder of the limited access privilege or quota share to engage in activities permitted by such limited access privilege or quota share.

¹⁶ Section 104(a)(10) of P.L. 109-479 added section 303(a)(15).

(c) REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.—

(1) IN GENERAL.—Any limited access privilege program to harvest fish submitted by a Council or approved by the Secretary under this section shall—

(A) if established in a fishery that is overfished or subject to a rebuilding plan, assist in its rebuilding;

(B) if established in a fishery that is determined by the Secretary or the Council to have over-capacity, contribute to reducing capacity;

(C) promote—

(i) fishing safety;

(ii) fishery conservation and management; and

(iii) social and economic benefits;

(D) prohibit any person other than a United States citizen, a corporation, partnership, or other entity established under the laws of the United States or any State, or a permanent resident alien, that meets the eligibility and participation requirements established in the program from acquiring a privilege to harvest fish, including any person that acquires a limited access privilege solely for the purpose of perfecting or realizing on a security interest in such privilege;

(E) require that all fish harvested under a limited access privilege program be processed on vessels of the United States or on United States soil (including any territory of the United States);

(F) specify the goals of the program;

(G) include provisions for the regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program and this Act, and any necessary modification of the program to meet those goals, with a formal and detailed review 5 years after the implementation of the program and thereafter to coincide with scheduled Council review of the relevant fishery management plan (but no less frequently than once every 7 years);

(H) include an effective system for enforcement, monitoring, and management of the program, including the use of observers or electronic monitoring systems;

(I) include an appeals process for administrative review of the Secretary's decisions regarding initial allocation of limited access privileges;

(J) provide for the establishment by the Secretary, in consultation with appropriate Federal agencies, for an information collection and review process to provide any additional information needed to determine whether any illegal acts of anti-competition, anti-trust, price collusion, or price fixing have occurred among regional fishery associations or persons receiving limited access privileges under the program; and

(K) provide for the revocation by the Secretary of limited access privileges held by any person found to have violated the antitrust laws of the United States.

(2) WAIVER.—The Secretary may waive the requirement of paragraph (1)(E) if the Secretary determines that—

- (A) the fishery has historically processed the fish outside of the United States; and
- (B) the United States has a seafood safety equivalency agreement with the country where processing will occur.

(3) FISHING COMMUNITIES.—

(A) IN GENERAL.—

(i) ELIGIBILITY.—To be eligible to participate in a limited access privilege program to harvest fish, a fishing community shall—

- (I) be located within the management area of the relevant Council;
- (II) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- (III) consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council's management area; and
- (IV) develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of coastal communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(ii) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section for any person who fails to comply with the requirements of the community sustainability plan. Any limited access privileges denied or revoked under this section may be reallocated to other eligible members of the fishing community.

- (B) PARTICIPATION CRITERIA.—In developing participation criteria for eligible communities under this paragraph, a Council shall consider—
- (i) traditional fishing or processing practices in, and dependence on, the fishery;
 - (ii) the cultural and social framework relevant to the fishery;
 - (iii) economic barriers to access to fishery;
 - (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
 - (v) the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and
 - (vi) the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery.

(4) REGIONAL FISHERY ASSOCIATIONS.—

(A) IN GENERAL.—To be eligible to participate in a limited access privilege program to harvest fish, a regional fishery association shall—

- (i) be located within the management area of the relevant Council;
- (ii) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- (iii) be a voluntary association with established by-laws and operating procedures;
- (iv) consist of participants in the fishery who hold quota share that are designated for use in the specific region or subregion covered by the regional fishery association, including commercial or recreational fishing, processing, fishery-dependent support businesses, or fishing communities;
- (v) not be eligible to receive an initial allocation of a limited access privilege but may acquire such privileges after the initial allocation, and may hold the annual fishing privileges of any limited access privileges it holds or the annual fishing privileges that is [sic]¹⁷ members contribute; and
- (vi) develop and submit a regional fishery association plan to the Council and the Secretary for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(B) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section to any person participating in a regional fishery association who fails to comply with the requirements of the regional fishery association plan.

¹⁷ So in original.

(C) PARTICIPATION CRITERIA.—In developing participation criteria for eligible regional fishery associations under this paragraph, a Council shall consider—

- (i) traditional fishing or processing practices in, and dependence on, the fishery;
- (ii) the cultural and social framework relevant to the fishery;
- (iii) economic barriers to access to fishery;
- (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
- (v) the administrative and fiduciary soundness of the association; and
- (vi) the expected effectiveness, operational transparency, and equitability of the fishery association plan.

(5) ALLOCATION.—In developing a limited access privilege program to harvest fish a Council or the Secretary shall—

(A) establish procedures to ensure fair and equitable initial allocations, including consideration of—

- (i) current and historical harvests;
- (ii) employment in the harvesting and processing sectors;
- (iii) investments in, and dependence upon, the fishery; and
- (iv) the current and historical participation of fishing communities;

(B) consider the basic cultural and social framework of the fishery, especially through—

- (i) the development of policies to promote the sustained participation of small owner-operated fishing vessels and fishing communities that depend on the fisheries, including regional or port-specific landing or delivery requirements; and
- (ii) procedures to address concerns over excessive geographic or other consolidation in the harvesting or processing sectors of the fishery;

(C) include measures to assist, when necessary and appropriate, entry-level and small vessel owner-operators, captains, crew, and fishing communities through set-asides of harvesting allocations, including providing privileges, which may include set-asides or allocations of harvesting privileges, or economic assistance in the purchase of limited access privileges;

(D) ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program by—

- (i) establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquire, or use; and
- (ii) establishing any other limitations or measures necessary to prevent an inequitable concentration of limited access privileges; and

(E) authorize limited access privileges to harvest fish to be held, acquired, used by, or issued under the system to persons who substantially participate in the fishery, including in a specific sector of such fishery, as specified by the Council.

(6) PROGRAM INITIATION.—

(A) LIMITATION.—Except as provided in subparagraph (D), a Council may initiate a fishery management plan or amendment to establish a limited access privilege program to harvest fish on its own initiative or if the Secretary has certified an appropriate petition.

(B) PETITION.—A group of fishermen constituting more than 50 percent of the permit holders, or holding more than 50 percent of the allocation, in the fishery for which a limited access privilege program to harvest fish is sought, may submit a petition to the Secretary requesting that the relevant Council or Councils with authority over the fishery be authorized to initiate the development of the program. Any such petition shall clearly state the fishery to which the limited access privilege program would apply. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the limited access program shall be eligible to sign a petition for such a program and shall serve as the basis for determining the percentage described in the first sentence of this subparagraph.

(C) CERTIFICATION BY SECRETARY.—Upon the receipt of any such petition, the Secretary shall review all of the signatures on the petition and, if the Secretary determines that the signatures on the petition represent more than 50 percent of the permit holders, or holders of more than 50 percent of the allocation in the fishery, as described by subparagraph (B), the Secretary shall certify the petition to the appropriate Council or Councils.

(D) NEW ENGLAND AND GULF REFERENDUM.—

(i) Except as provided in clause (iii) for the Gulf of Mexico commercial red snapper fishery, the New England and Gulf Councils may not submit, and the Secretary may not approve or implement, a fishery management plan or amendment that creates an individual fishing quota program, including a Secretarial plan, unless such a system, as ultimately developed, has been approved by more than 2/3 of those voting in a referendum among eligible permit holders, or other persons described in clause (v), with respect to the New England Council, and by a majority of those voting in the referendum among eligible permit holders with respect to the Gulf Council. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the individual fishing quota program shall be eligible to vote in such a referendum. If an individual fishing quota program fails to be approved by the requisite number of those voting, it may be revised and submitted for approval in a subsequent referendum.

(ii) The Secretary shall conduct a referendum under this subparagraph, including notifying all persons eligible to participate in the referendum and making available to them information concerning the schedule, procedures, and eligibility requirements for the referendum process and the proposed individual fishing quota program. Within 1 year after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary shall publish guidelines and procedures to determine procedures and voting eligibility requirements for referenda and to conduct such referenda in a fair and equitable manner.

(iii) The provisions of section 407(c) of this Act shall apply in lieu of this subparagraph for an individual fishing quota program for the Gulf of Mexico commercial red snapper fishery.

(iv) Chapter 35 of title 44, United States Code, (commonly known as the Paperwork Reduction Act) does not apply to the referenda conducted under this subparagraph.

(v) The Secretary shall promulgate criteria for determining whether additional fishery participants are eligible to vote in the New England referendum described in clause (i) in order to ensure that crew members who derive a significant percentage of their total income from the fishery under the proposed program are eligible to vote in the referendum.

(vi) In this subparagraph, the term ‘individual fishing quota’ does not include a sector allocation.

(7) TRANSFERABILITY.—In establishing a limited access privilege program, a Council shall—

(A) establish a policy and criteria for the transferability of limited access privileges (through sale or lease), that is consistent with the policies adopted by the Council for the fishery under paragraph (5); and

(B) establish, in coordination with the Secretary, a process for monitoring of transfers (including sales and leases) of limited access privileges.

(8) PREPARATION AND IMPLEMENTATION OF SECRETARIAL PLANS.—This subsection also applies to a plan prepared and implemented by the Secretary under section 304(c) or 304(g).

(9) ANTITRUST SAVINGS CLAUSE.—Nothing in this Act shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of the preceding sentence, the term ‘antitrust laws’ has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

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MSA § 303A

(d) AUCTION AND OTHER PROGRAMS.—In establishing a limited access privilege program, a Council shall consider, and may provide, if appropriate, an auction system or other program to collect royalties for the initial, or any subsequent, distribution of allocations in a limited access privilege program if—

(1) the system or program is administered in such a way that the resulting distribution of limited access privilege shares meets the program requirements of this section; and

(2) revenues generated through such a royalty program are deposited in the Limited Access System Administration Fund established by section 305(h)(5)(B) and available subject to annual appropriations.

(e) COST RECOVERY.—In establishing a limited access privilege program, a Council shall—

(1) develop a methodology and the means to identify and assess the management, data collection and analysis, and enforcement programs that are directly related to and in support of the program; and

(2) provide, under section 304(d)(2), for a program of fees paid by limited access privilege holders that will cover the costs of management, data collection and analysis, and enforcement activities.

(f) CHARACTERISTICS.—A limited access privilege established after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 is a permit issued for a period of not more than 10 years that—

(1) will be renewed before the end of that period, unless it has been revoked, limited, or modified as provided in this subsection;

(2) will be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have failed to comply with any term of the plan identified in the plan as cause for revocation, limitation, or modification of a permit, which may include conservation requirements established under the plan;

(3) may be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have committed an act prohibited by section 307 of this Act; and

(4) may be acquired, or reacquired, by participants in the program under a mechanism established by the Council if it has been revoked, limited, or modified under paragraph (2) or (3).

(g) LIMITED ACCESS PRIVILEGE ASSISTED PURCHASE PROGRAM.—

(1) IN GENERAL.—A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 53706(a)(7) of title 46, United States Code, to issue obligations that aid in financing—

(A) the purchase of limited access privileges in that fishery by fishermen who fish from small vessels; and

(B) the first-time purchase of limited access privileges in that fishery by entry level fishermen.

(2) ELIGIBILITY CRITERIA.—A Council making a submission under paragraph (1) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under subparagraphs (A) and (B) of paragraph (1) and the portion of funds to be allocated for guarantees under each subparagraph.

(h) EFFECT ON CERTAIN EXISTING SHARES AND PROGRAMS.—Nothing in this Act, or the amendments made by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, shall be construed to require a reallocation or a reevaluation of individual quota shares, processor quota shares, cooperative programs, or other quota programs, including sector allocation in effect before the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.

(i) TRANSITION RULES.—

(1) IN GENERAL.—The requirements of this section shall not apply to any quota program, including any individual quota program, cooperative program, or sector allocation for which a Council has taken final action or which has been submitted by a Council to the Secretary, or approved by the Secretary, within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, except that—

(A) the requirements of section 303(d) of this Act in effect on the day before the date of enactment of that Act shall apply to any such program;

(B) the program shall be subject to review under subsection (c)(1)(G) of this section not later than 5 years after the program implementation; and

(C) nothing in this subsection precludes a Council from incorporating criteria contained in this section into any such plans.

(2) PACIFIC GROUND FISH PROPOSALS.—The requirements of this section, other than subparagraphs (A) and (B) of subsection (c)(1) and subparagraphs (A), (B), and (C) of paragraph (1) of this subsection, shall not apply to any proposal authorized under section 302(f) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 that is submitted within the timeframe prescribed by that section.

16 U.S.C. 1853a note, 1854
MSA §§ 303A note, 304

P.L. 109-479, sec. 106(e), MSA § 303A note

16 U.S.C. 1853a note

APPLICATION WITH AMERICAN FISHERIES ACT.—Nothing in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), as added by subsection (a) [P.L. 109-479], shall be construed to modify or supersede any provision of the American Fisheries Act (46 U.S.C. 12102 note; 16 U.S.C. 1851 note; et alia).

P.L. 104-297, sec. 108(i), MSA § 303 note

EXISTING QUOTA PLANS.—Nothing in this Act [P.L.104-297] or the amendments made by this Act shall be construed to require a reallocation of individual fishing quotas under any individual fishing quota program approved by the Secretary before January 4, 1995.

SEC. 304. ACTION BY THE SECRETARY

16 U.S.C. 1854

104-297

(a) REVIEW OF PLANS.—

(1) Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment, the Secretary shall—

(A) immediately commence a review of the plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law; and

(B) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

(2) In undertaking the review required under paragraph (1), the Secretary shall—

(A) take into account the information, views, and comments received from interested persons;

(B) consult with the Secretary of State with respect to foreign fishing; and

(C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 303(a)(6).

(3) The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period under paragraph (1) by written notice to the Council. A notice of disapproval or partial approval shall specify—

(A) the applicable law with which the plan or amendment is inconsistent;

(B) the nature of such inconsistencies; and

(C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.

If the Secretary does not notify a Council within 30 days of the end of the comment period of the approval, disapproval, or partial approval of a plan or amendment, then such plan or amendment shall take effect as if approved.

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SEC. 402. INFORMATION COLLECTION

16 U.S.C. 1881a

109-479

(a) COLLECTION PROGRAMS.—

(1) COUNCIL REQUESTS.—If a Council determines that additional information would be beneficial for developing, implementing, or revising a fishery management plan or for determining whether a fishery is in need of management, the Council may request that the Secretary implement an information collection program for the fishery which would provide the types of information specified by the Council. The Secretary shall undertake such an information collection program if he determines that the need is justified, and shall promulgate regulations to implement the program within 60 days after such determination is made. If the Secretary determines that the need for an information collection program is not justified, the Secretary shall inform the Council of the reasons for such determination in writing. The determinations of the Secretary under this paragraph regarding a Council request shall be made within a reasonable period of time after receipt of that request.

(2) SECRETARIAL INITIATION.—If the Secretary determines that additional information is necessary for developing, implementing, revising, or monitoring a fishery management plan, or for determining whether a fishery is in need of management, the Secretary may, by regulation, implement an information collection or observer program requiring submission of such additional information for the fishery.

109-479

(b) CONFIDENTIALITY OF INFORMATION.—

(1) Any information submitted to the Secretary, a State fishery management agency, or a marine fisheries commission by any person in compliance with the requirements of this Act shall be confidential and shall not be disclosed except—

(A) to Federal employees and Council employees who are responsible for fishery management plan development, monitoring, or enforcement;

(B) to State or Marine Fisheries Commission employees as necessary to further the Department's mission, subject to a confidentiality agreement that prohibits public disclosure of the identity of business of any person;

(C) to State employees who are responsible for fishery management plan enforcement, if the States employing those employees have entered into a fishery enforcement agreement with the Secretary and the agreement is in effect;

(D) when required by court order;

(E) when such information is used by State, Council, or Marine Fisheries Commission employees to verify catch under a limited access program, but only to the extent that such use is consistent with subparagraph (B);

(F) when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act;

(G) when such information is required to be submitted to the Secretary for any determination under a limited access program; or

(H) in support of homeland and national security activities, including the Coast Guard's homeland security missions as defined in section 888(a)(2) of the Homeland Security Act of 2002 (6 U.S.C. 468(a)(2)).

(2) Any observer information shall be confidential and shall not be disclosed, except in accordance with the requirements of subparagraphs (A) through (H) of paragraph (1), or—

(A) as authorized by a fishery management plan or regulations under the authority of the North Pacific Council to allow disclosure to the public of weekly summary bycatch information identified by vessel or for haul-specific bycatch information without vessel identification;

(B) when such information is necessary in proceedings to adjudicate observer certifications; or

(C) as authorized by any regulations issued under paragraph (3) allowing the collection of observer information, pursuant to a confidentiality agreement between the observers, observer employers, and the Secretary prohibiting disclosure of the information by the observers or observer employers, in order—

(i) to allow the sharing of observer information among observers and between observers and observer employers as necessary to train and prepare observers for deployments on specific vessels; or

(ii) to validate the accuracy of the observer information collected.

(3) The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under this Act, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this Act or the use, release, or publication of bycatch information pursuant to paragraph (2)(A).

(c) RESTRICTION ON USE OF CERTAIN INFORMATION.—

(1) The Secretary shall promulgate regulations to restrict the use, in civil enforcement or criminal proceedings under this Act, the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), and the Endangered Species Act (16 U.S.C. 1531 et seq.), of information collected by voluntary fishery data collectors, including sea samplers, while aboard any vessel for conservation and management purposes if the presence of such a fishery data collector aboard is not required by any of such Acts or regulations thereunder.

(2) The Secretary may not require the submission of a Federal or State income tax return or statement as a prerequisite for issuance of a permit until such time as the Secretary has promulgated regulations to ensure the confidentiality of information contained in such return or statement, to limit the information submitted to that necessary to achieve a demonstrated conservation and management purpose, and to provide appropriate penalties for violation of such regulations.

16 U.S.C. 1881a-1881b
MSA §§ 402-403

(d) **CONTRACTING AUTHORITY.**—Notwithstanding any other provision of law, the Secretary may provide a grant, contract, or other financial assistance on a sole-source basis to a State, Council, or Marine Fisheries Commission for the purpose of carrying out information collection or other programs if—

(1) the recipient of such a grant, contract, or other financial assistance is specified by statute to be, or has customarily been, such State, Council, or Marine Fisheries Commission; or

(2) the Secretary has entered into a cooperative agreement with such State, Council, or Marine Fisheries Commission.

(e) **RESOURCE ASSESSMENTS.**—

(1) The Secretary may use the private sector to provide vessels, equipment, and services necessary to survey the fishery resources of the United States when the arrangement will yield statistically reliable results.

(2) The Secretary, in consultation with the appropriate Council and the fishing industry--

(A) may structure competitive solicitations under paragraph (1) so as to compensate a contractor for a fishery resources survey by allowing the contractor to retain for sale fish harvested during the survey voyage;

(B) in the case of a survey during which the quantity or quality of fish harvested is not expected to be adequately compensatory, may structure those solicitations so as to provide that compensation by permitting the contractor to harvest on a subsequent voyage and retain for sale a portion of the allowable catch of the surveyed fishery; and

(C) may permit fish harvested during such survey to count toward a vessel's catch history under a fishery management plan if such survey was conducted in a manner that precluded a vessel's participation in a fishery that counted under the plan for purposes of determining catch history.

(3) The Secretary shall undertake efforts to expand annual fishery resource assessments in all regions of the Nation.

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SEC. 403. OBSERVERS

16 U.S.C. 1881b

(a) **GUIDELINES FOR CARRYING OBSERVERS.**—Within one year after the date of enactment of the Sustainable Fisheries Act, the Secretary shall promulgate regulations, after notice and opportunity for public comment, for fishing vessels that carry observers. The regulations shall include guidelines for determining—

(1) when a vessel is not required to carry an observer on board because the facilities of such vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; and

(2) actions which vessel owners or operators may reasonably be required to take to render such facilities adequate and safe.

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[CITE: 16USC773c]

TITLE 16--CONSERVATION

CHAPTER 10--NORTHERN PACIFIC HALIBUT FISHING

SUBCHAPTER IV--NORTHERN PACIFIC HALIBUT ACT OF 1982

Sec. 773c. General responsibility

(a) Secretary of Commerce

The Secretary shall have general responsibility to carry out the Convention and this subchapter.

(b) Adoption of regulations; cooperation with Canadian officials

In fulfilling this responsibility, the Secretary--

(1) shall, in consultation with the Secretary of the department in which the Coast Guard is operating, adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and this subchapter; and

(2) may, with the concurrence of the Secretary of State, cooperate with the duly authorized officials of the Government of Canada.

(c) Regional Fishery Management Council involvement

The Regional Fishery Management Council having authority for the geographic area concerned may develop regulations governing the United States portion of Convention waters, including limited access regulations, applicable to nationals or vessels of the United States, or both, which are in addition to, and not in conflict with regulations adopted by the Commission. Such regulations shall only be implemented with the approval of the Secretary, shall not discriminate between residents of different States, and shall be consistent with the limited entry criteria set forth in section 1853(b)(6) of this title. If it becomes necessary to allocate or assign halibut fishing privileges among various United States fishermen, such allocation shall be fair and

equitable to all such fishermen, based upon the rights and obligations in existing Federal law, reasonably calculated to promote conservation, and carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of the halibut fishing privileges: Provided, That the Regional Council may provide for the rural coastal villages of Alaska the opportunity to establish a commercial halibut fishery in areas in the Bering Sea to the north of 56 degrees north latitude during a 3 year development period.

(Pub. L. 97-176, Sec. 5, May 17, 1982, 96 Stat. 79; Pub. L. 104-208, div. A, title I, Sec. 101(a) [title II, Sec. 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41.)

Amendments

1996--Subsec. (c). Pub. L. 104-208 made technical amendment to reference in original act which appears in text as reference to section 1853(b)(6) of this title.

Effective Date of 1996 Amendment

Section 101(a) [title II, Sec. 211(b)] of div. A of Pub. L. 104-208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

Transfer of Functions

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.