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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0808011016-91210-04]

RIN 0648-AX14

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands (Amendment 92) and Gulf of Alaska License (Amendment 82) Limitation Program

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 92 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and Amendment 82 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. This action removes trawl gear endorsements on licenses issued under the license limitation program in specific management areas if those licenses have not been used on vessels that met minimum recent landing requirements using trawl gear. This action provides exemptions to this requirement for licenses that are used in trawl fisheries subject to certain limited access privilege programs. This action issues new area endorsements for trawl catcher vessel licenses in the Aleutian Islands if minimum recent landing requirements in the Aleutian Islands were met. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plans, and other applicable law.

DATES: Effective September 14, 2009.

ADDRESSES: Amendments 92 and 82, the Environmental Assessment (EA), Regulatory Impact Review (RIR), and the Final Regulatory Flexibility Analysis (FRFA) for this action are available from the NMFS Alaska Region website at <http://www.alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information

requirements contained in this final rule may be submitted to NMFS Alaska Region and by e-mail to David_Rostker@omb.eop.gov, or fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background on the License Limitation Program

NMFS manages the groundfish fisheries in the exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands Management Area (BSAI) and the Gulf of Alaska (GOA) under the 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 (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The Council and NMFS have long sought to control the amount of fishing in the North Pacific Ocean to ensure that fisheries are conservatively managed and do not exceed established biological thresholds. One of the measures used by the Council and NMFS is the license limitation program (LLP) which limits access to the groundfish, crab, and scallop fisheries in the BSAI and GOA. The LLP is intended to limit entry into federally managed fisheries. For groundfish, the LLP requires that persons hold and assign a license to each vessel that is used to fish in federally managed fisheries, with some limited exemptions. The Council initially envisioned the LLP as an early step in a long-term plan to establish a comprehensive rationalization program for groundfish in the North Pacific that would ultimately assign tradable quotas to fishery participants that would provide them an exclusive access privilege to groundfish resources. These exclusive access programs are more commonly known as limited access privilege programs (LAPPs).

The LLP for groundfish fisheries was recommended by the Council as Amendments 39 and 41 to the BSAI and GOA groundfish FMPs, respectively. The Council adopted the LLP for groundfish in June 1995, and NMFS approved Amendments 39 and 41 on September 12, 1997. NMFS published a final rule to implement the LLP on October 1, 1998 (63 FR 52642); and LLP licenses were required for federal

groundfish fisheries beginning on January 1, 2000. The preamble to the final rule implementing the groundfish LLP and the EA/RIR/FRFA prepared for this rule describe the rationale and specific provisions of the LLP in greater detail (see **ADDRESSES**) and are not repeated here. The key components of the LLP are briefly summarized below.

The LLP for groundfish established specific criteria that must be met to allow a person to use a vessel to directed fish in most federally managed groundfish fisheries. An LLP license must be assigned to each vessel that is used to participate in directed fishing for most federally managed groundfish species. The term directed fishing and the specific groundfish species for which an LLP license is required are defined in regulations at § 679.2. An exception to the requirement that an LLP license must be assigned to a vessel applies if the vessel is: less than 26 feet length overall (LOA) and fishing in the GOA; less than 32 feet LOA and fishing in the BSAI; using jig gear in the BSAI if the vessel is less than 60 feet LOA and deploys no more than five jigging machines; or specifically constructed for and used exclusively in Community Development Quota fisheries, and designed and equipped to meet specific needs that are described in regulations at § 679.4(k).

Under the LLP, NMFS issued licenses that (1) endorse fishing activities in specific regulatory areas in the BSAI and GOA; (2) restrict the length of the vessel on which the LLP license may be used; (3) designate the fishing gear that may be used on the vessel (i.e., trawl or non-trawl gear designations); (4) designate the type of vessel operation permitted (i.e., LLP licenses designate whether the vessel to which the LLP is assigned may operate as a catcher vessel or as a catcher/processor); and (5) are issued so that the endorsements for specific regulatory areas, gear designations, or vessel operational types are non-severable from the LLP license (i.e., once an LLP license is issued, the components of the LLP license cannot be transferred independently). By creating LLP licenses with these characteristics, the Council and NMFS limited the ability of a person to assign an LLP license that was derived from the historic landing activity of a vessel in one area, using a specific fishing gear or operational type to be used in other areas, with different gears or operational types, in a manner that could expand fishing capacity. The preamble to the final rule implementing the groundfish LLP provides a more detailed explanation of the rationale for specific

provisions in the LLP (October 1, 1998; 63 FR 52642).

The regulatory areas for which LLP licenses were issued included the Bering Sea subarea (BS), Aleutian Islands subarea (AI), Southeast Outside District (SEO), Central Gulf of Alaska (CG), which includes the West Yakutat District, and Western Gulf of Alaska (WG). The documented harvest requirements necessary to receive an LLP license endorsed for a specific area differed depending on the size and the operational type of the vessel. For example, for a vessel owner to receive an endorsement for trawl gear in the CG with a catcher/processor designation, a vessel must have met the minimum documented harvest requirements in the CG using trawl gear and must have caught and processed those documented harvests onboard the vessel. NMFS did not issue any LLP licenses with a trawl endorsement in SEO because trawl gear is prohibited in SEO. Therefore, this action does not apply to the SEO management area.

In 1999, NMFS issued groundfish LLP licenses with the appropriate regulatory area endorsements, gear, vessel length, and vessel operational type designations based on the documented harvests of vessels. LLP licenses were required for vessels participating in directed fishing for LLP groundfish species as of January 1, 2000. NMFS issued over 300 LLP licenses endorsed for trawl gear for use in the BSAI and GOA. In many cases, trawl LLP licenses were endorsed for multiple regulatory areas (e.g., WG, CG, and BS) if a vessel met the minimum number of documented harvests in more than one area. Additionally, a number of trawl LLP licenses were designated for both trawl and non-trawl gear (i.e., hook-and-line, pot, or jig gear) if the vessel met the documented harvest requirements using both trawl and non-trawl gear.

After LLP licenses were initially issued, NMFS became aware from public testimony and a review of landings data that a substantial number of trawl-endorsed LLP licenses were not being used for fishing in some, or all, of the regulatory areas for which they were endorsed. Changes in the economic viability of some fishing operations, changes in fishery management regulations, or consolidation of fishery operations were likely factors that affected the number of LLP licenses actively used by vessels. LLP licenses that are valid but are not currently being used on a vessel are commonly known as "latent" LLP licenses.

In early 2007, the Council began reviewing the use of trawl-endorsed LLP licenses. This review was initiated

primarily at the request of active trawl fishery participants who were concerned that latent trawl-endorsed LLP licenses could become active in the future and adversely affect their fishing operations. If the total allowable catch (TAC) or exvessel value of a fishery resource increased these factors could attract additional effort by trawl vessels. This increased effort could result in overcapacity in the fishery and make it more difficult for NMFS to close fisheries in a timely manner, potentially resulting in the TAC being exceeded for a fishery. During the process of this review, the Council also received input from the public requesting modification to the LLP to meet unique conditions in the AI area that limit the ability of catcher vessels to harvest, and specific AI area communities to process, federally managed groundfish. In April 2008, after more than a year of review and extensive public comment, the Council recommended modifications to the LLP to revise eligibility criteria for trawl endorsements on LLP licenses.

Notice of Availability and Proposed Rule

NMFS published the notice of availability for Amendments 92 and 82 on December 12, 2008 (73 FR 75659), with a public comment period that closed on February 10, 2009. NMFS published the proposed rule for this action on December 30, 2008 (73 FR 79773), with a public comment period that closed on February 13, 2009. Amendments 92 and 82 were approved by NMFS on March 16, 2009. NMFS received eight public comments from three unique persons on Amendments 92 and 82 and the proposed rule; these are summarized and responded to below.

Changes to the LLP Program

This rule implements two different actions. First, this rule removes certain latent trawl regulatory area endorsements on LLP licenses. With two exceptions, a trawl endorsement for a specific regulatory area is removed from an LLP license that has been assigned to a vessel that has not made a minimum of two landings using trawl gear in a specific regulatory area during the period 2000 through 2006.

One exemption allows a person to retain a trawl endorsement on an LLP license for both the CG and the WG if the LLP license had been used on a vessel that made at least 20 landings using trawl gear in either the CG or WG from 2005 through 2007. The second exemption allows a person to retain a trawl endorsement in a specific regulatory area if that area endorsement

is required for continued participation in one of three limited access privilege programs (LAPPs): the American Fisheries Act (AFA); the Amendment 80 Program; or the CG Rockfish Program. Under this exemption, NMFS will not remove trawl endorsements in the BS or AI regulatory areas from LLP licenses that are assigned for use in the AFA or Amendment 80 LAPP, and NMFS will not remove trawl endorsements in the CG regulatory area from LLP licenses assigned for use in the CG Rockfish Program LAPP. This exemption would apply only to LLP licenses used in fisheries managed under these three LAPPs, because under NMFS' regulations, fisheries managed under other LAPPs in the North Pacific (e.g., BSAI crab and BSAI halibut and fixed-gear sablefish) cannot be fished by vessels using trawl gear.

The second action under this rule is the issuance of new and additional trawl AI area endorsements for catcher vessel operations for use in the Aleutian Islands Subarea. Under this rule, NMFS will issue AI trawl endorsements based on the harvests of: (1) non-AFA catcher vessels less than 60 feet in LOA, if those vessels have made at least 500 metric tons (mt) of landings of Pacific cod harvested from State of Alaska (State) waters adjacent to the Aleutian Islands Subarea during 2000 through 2006; and (2) non-AFA catcher vessels equal to or greater than 60 feet LOA if those vessels have made at least one landing of fish harvested from State waters during the Federal groundfish season in the Aleutian Islands Subarea and have made at least 1,000 mt of Pacific cod landings harvested from the BSAI during 2000 through 2006. The rationale and effects of these two proposed actions are described in detail in the preamble to the proposed rule and the EA/RIR/FRFA supporting this action (see **ADDRESSES**) and are briefly summarized here.

Action 1: Removing Latent Trawl LLP Licenses

Use of Trawl LLP Endorsements

Latent LLP licenses are inactive, but not invalid. Removing latent trawl LLP endorsements reduces the risk that in the future vessel operators could assign latent LLP licenses to trawl vessels, effectively reactivating those licenses and thereby increasing the amount of trawl effort in the groundfish fisheries. This additional effort could increase harvest rate in the trawl fishery, and adversely affect currently active participants by increasing competition, diluting their potential gross revenues and creating incentives for harvesters to

race for fish in a potentially wasteful manner.

The Council considered a range of options and alternatives to determine the minimum number of landings required for a trawl LLP endorsement to remain valid. After a review of groundfish catch history and public testimony, the Council determined that two landings during the seven year period from 2000 through 2006 represented a minimal, but sufficient, amount of participation in the trawl fisheries to indicate some level of dependence on trawl fishing. The Council recommended that this landing requirement apply to each regulatory area so that endorsements would be removed only for those regulatory areas where minimum landing requirements were not met. Therefore, LLP licenses that were active in more than one regulatory area might meet the minimum landing requirements in one area but not another.

Determining the Number of Landings Assigned to an LLP License

Beginning in 2002, NMFS required that an LLP license designate a specific vessel on which it was being used. This requirement allowed NMFS to assign landings to a specific LLP license without having to make any assumptions about the specific vessel to which the LLP license was assigned. If an LLP license is not assigned a sufficient number of landings in a specific regulatory area, NMFS would extinguish the trawl endorsement on that LLP license in that regulatory area. NMFS can verify use of an LLP license on a specific vessel after 2002. When combined with landings records, NMFS can determine how many landings may be assigned to a specific LLP license during a specific time frame.

However, during the first two years of the LLP, 2000 and 2001, NMFS did not track the use of LLP licenses on specific vessels. Although LLP licenses were required to be onboard vessels, there is no independent data source to verify specific LLP licenses used on specific vessels during 2000 and 2001. NMFS will assume that the vessel that had the eligible landings for the original LLP license (i.e., the original qualifying vessel) used the LLP license during all of 2000 and 2001, unless an LLP license holder provides NMFS a clear and unambiguous contract or other written documentation to prove this assumption is incorrect. This assumption offers an LLP holder the opportunity to challenge NMFS's official record, but a rebuttal of this assumption cannot be based merely on oral testimony or recollection, which

NMFS considers to be insufficient evidence for purposes of this action.

If a vessel was designated on more than one LLP license, NMFS will assign the credit for that landing to any LLP licenses assigned to, or "stacked," on that vessel at the time of landing. Effectively, NMFS will credit a single landing to more than one LLP license. This provision ensures that in those cases in which more than one LLP license with a specific area endorsement was assigned to a vessel that made a landing, all LLP licenses assigned to that vessel at the time of landing would be credited with the landing. Because NMFS, and in many cases vessel owners and operators, did not specify how specific landings should be assigned to multiple LLP licenses assigned to a vessel at the time a landing was made, this provision will resolve any disputes that may arise about the assignment of specific landings by crediting all LLP licenses used on that vessel when a landing was made.

Exemptions From the Minimum Landing Requirements

Exemption 1: LLP Licenses Used on Vessels Active in the GOA

This rule will retain a trawl endorsement on a catcher vessel LLP license in a regulatory area in the GOA (i.e., the CG or WG), if the LLP license was assigned to a vessel that made more than 20 landings in at least one of the regulatory areas of the GOA from 2005 through 2007. This exemption allows catcher vessel LLP license holders who have demonstrated a substantial and recent dependence in the GOA to continue to hold an endorsement in both the CG and WG. Furthermore, this will allow active participants in the CG to keep their WG endorsements because the TACs for several groundfish species in the Western GOA have not been fully harvested in recent years.

Exemption 2: Retaining Trawl Endorsements for LLP Licenses Assigned to LAPPs

This rule exempts any LLP license that is assigned for use in the AFA, CG Rockfish Program, or the Amendment 80 Program from the specific landing requirements in the regulatory areas for which that area endorsement is required. This exemption applies as follows:

1. Exempt landing requirements for BS or AI area endorsements originally issued to LLP licenses for vessels qualified under the AFA, and any BS or AI area endorsement on an LLP license assigned to an AFA vessel not having any other LLP license assigned to that

vessel as of the effective date of this rule.

2. Exempt landing requirements for BS or AI area endorsements originally issued to LLP licenses for vessels that may generate quota share (QS) under the Amendment 80 Program.

3. Exempt landing requirements for CG area endorsements on LLP licenses that are eligible to receive QS under the CG Rockfish Program.

This exemption benefits the participants in the three LAPPs that have already met stricter requirements for these specific management areas to participate in these programs. A person must hold a valid LLP license with endorsements in specific regulatory areas to be eligible to participate in these LAPPs. The AFA and Amendment 80 LAPPs require that a person assign an LLP license with a valid trawl endorsement in the BS or AI to a vessel eligible under those LAPPs. Similarly, under the CG Rockfish Program, a person must have an LLP license with a trawl endorsement in the CG to participate in that LAPP. Removing LLP licenses that do not meet specific landing requirements, but that are required to continue to receive exclusive harvest allocations for these LAPPs for which they are otherwise qualified, adversely affects LAPP participants. This is not the intent of this action. The intent of this action is to remove latent trawl endorsements. The net effect of this exemption is that AFA LLP licenses and LLP licenses originally issued to Amendment 80 vessels that are eligible to generate QS are subject only to the CG and WG area endorsement landing requirements, and the CG Rockfish Program LLP licenses are subject only to the BS, AI, and WG area endorsement landing requirements.

NMFS will determine which LLP licenses are eligible for this exemption from the landing requirements for each of the three LAPPs as follows:

1. For the AFA, LLP licenses with a trawl gear designation with a BS or AI area endorsement that were originally issued based on the harvest activities of AFA vessels are exempt from the landing requirements. In addition, LLP licenses with a trawl gear designation with BS or AI area endorsements that were not originally issued based on the harvest activities of AFA vessels, but that are assigned to AFA vessels on the effective date of this regulation, are exempt from the landing requirements in the BS or AI. This exemption to the landing requirements applies to an LLP license only if no LLP licenses originally issued based on the harvest activities of AFA vessels are assigned to

that AFA vessel on the effective date of the rule.

2. For the Amendment 80 Program, all LLP licenses with a trawl gear designation and with a BS or AI area endorsement that were originally issued based on the harvest activities of Amendment 80 vessels that may generate QS are exempt from the landing requirements in the BS or AI. A list of the Amendment 80 vessels that were used to harvest catch that may result in the issuance of QS under the Amendment 80 Program is provided in Column A of Table 31 to 50 CFR part 679. The LLP licenses originally issued based on the harvest activities of those Amendment 80 vessels, and that are subject to this exemption are listed in Column C of Table 31 to 50 CFR part 679.

3. For the CG Rockfish Program, all LLP licenses with a trawl gear designation and with a CG area endorsement to which NMFS has assigned Rockfish QS are exempt from the landing requirements in the CG. This ensures that LLP licenses that were issued QS and are necessary to participate in the CG Rockfish Program can continue to be used in the CG and remain valid.

Action 2: Adding Aleutian Island Endorsements to Non-AFA Trawl Catcher Vessel LLP Licenses

Background on Aleutian Island Fisheries

Congress, the Council, and NMFS have developed and implemented a series of programs in recent years that provide harvest opportunities for catcher vessels in the Aleutian Islands. They attempted to provide economic opportunities for harvesters and processors in the Aleutian Islands, specifically for the community of Adak. For example, section 803 of the Consolidated Appropriations Act of 2004 (Public Law 108-199), allocates the Aleutian Islands directed pollock fishery to the Aleut Corporation, or its authorized agents, for the economic development of Adak. NMFS published a final rule to implement section 803 on March 1, 2005 (70 FR 9856). Also in 2005, NMFS implemented the Crab Rationalization Program, a LAPP for BSAI crab fisheries (March 2, 2005, 70 FR 10174) that allocates 10 percent of the TAC for Western Aleutian Islands golden king crab (*Lithodes aequispinus*) to a specific entity representing the community of Adak. The Crab Rationalization Program also places geographic delivery requirements on a portion of the remaining Western Aleutian Islands golden king crab TAC

that favors processing in Adak and the nearby community of Atka. In 2007, NMFS implemented the Amendment 80 Program which specifies that a portion of the Aleutian Islands Pacific ocean perch and Atka mackerel fisheries would be available for harvest by trawl catcher vessels. These vessels may choose to land their catch in Adak or Atka, but are not required to do so (September 14, 2007, 72 FR 52668).

The State of Alaska also has established Pacific cod and sablefish fisheries in the State waters of the Aleutian Islands that are exclusively managed by the State and that provide harvesting and processing opportunities for vessels and processors based in Adak and the nearby community of Atka. These fisheries are managed based on a guideline harvest level (GHL) that is determined by the State. These State-managed fisheries are tailored to open after the close of the federally managed seasons. In addition, State fishery managers coordinate with NMFS to open and close State waters to fishing concurrently with openings and closings for the Federal seasons to harvest the Federal TAC. A State-managed fishery that occurs in state waters concurrently with a Federal fishery is called a "parallel fishery." The coordinated parallel fishery in State waters allows harvesters to efficiently harvest the Federal TAC regardless of whether harvest occurs in State or Federal waters.

Commercial fishing grounds often occur within State waters (i.e., within 3 nautical miles of the coastline) on the narrow continental shelf around some of the Aleutian Islands because of the bathymetry of the region and the life histories of the target species; however, these fishery resources are also present in Federal waters. In recent years, many of the catcher vessels actively fishing in the Aleutian Islands and delivering their catch to Adak, and to a lesser extent, Atka, have harvested fish from State waters, either under the GHL during the State-managed Pacific cod fishery, or under the Federal TAC during the parallel fishery. Many of these vessels are not currently designated on an LLP license with an AI area endorsement.

This action will assign new AI area endorsements to provide additional harvest opportunities to non-AFA trawl catcher vessels that have been active in State waters in the Aleutian Islands in recent years, but which are not designated on an LLP license with an AI area endorsement. These new AI area endorsements will be added to LLP licenses that name non-AFA trawl catcher vessels because those vessels have been active in the fisheries in the

Aleutian Islands, and AFA LLP licenses that already hold AI area endorsements will continue to be eligible to use those LLP licenses to fish in the Aleutian Islands under the exemption to the landing requirements described earlier in this preamble. In particular, these new AI area endorsements will provide additional opportunities for catcher vessels to harvest and process Pacific cod in the Aleutian Islands. Pacific cod is the groundfish species most frequently targeted by non-AFA catcher vessels in the State GHL and parallel fisheries in the Aleutian Islands; therefore the Council used those landings as the basis for determining eligibility to receive an AI area endorsement.

Two different types of AI area endorsements will be created. First, non-AFA trawl catcher vessels that are equal to or greater than 60 feet LOA, have made at least one landing in either the State GHL or parallel fishery, and have made at least 1,000 metric tons (mt) of Pacific cod landings harvested from the BSAI from 2000 through 2006 will be eligible to receive an AI area endorsement on the LLP licenses that name these vessels. Second, non-AFA trawl catcher vessels that are less than 60 feet LOA and that have made at least 500 mt of Pacific cod landings harvested from the parallel fishery, but not the Stage GHL fishery, from 2000 through 2006 would be eligible to receive an AI endorsement on the LLP licenses that name these vessels. NMFS will assign these new AI endorsements to the LLP licenses that designate eligible vessels at the time of the effective date of this rule. The EA/RIR/FRFA estimates that eight AI area endorsements will be issued based on the catch history of vessels less than 60 feet LOA, and four AI area endorsements will be issued based on the catch history of vessels equal to or greater than 60 feet LOA (see **ADDRESSES**).

As discussed above, different qualification criteria apply for catcher vessels less than 60 feet LOA and those equal to or greater than 60 feet LOA. Vessels less than 60 feet LOA are typically adapted to fish in multiple fisheries using multiple gear types and are subject to a different range of monitoring, enforcement, recordkeeping, and reporting requirements under existing regulations than are vessels equal to or greater than 60 feet LOA. In addition, LLP licenses initially issued based on the documented landings of vessels less than 60 feet LOA cannot be used on vessels greater than 60 feet LOA. Because of the operational and regulatory distinctions applicable to

vessels less than and equal to or greater than 60 feet LOA, the Council recommended different criteria be applied to determine whether an AI trawl endorsement would be issued to vessels based on their size. The preamble to the proposed rule contains an extensive discussion of the rationale for this action, and is not repeated here.

In addition, the Council recommended that the new AI area endorsements based on the landings of vessels less than 60 feet LOA should be severable and transferable from the overall LLP license. However, the Council clarified that these AI area endorsements may be reassigned only to a trawl catcher vessel LLP license with a maximum length overall (MLOA) of less than 60 feet in order to ensure that these endorsements would be used on small vessels in the Aleutian Islands. During deliberations, the Council noted that the less than 60-foot catcher vessel fleet is more reliant on multi-species operations than are vessels greater than 60 feet; and most of the under 60-foot vessel operators also hold LLP licenses that are endorsed for trawl fisheries in other regulatory areas. These vessel operators must balance a variety of fishing opportunities in other areas (e.g., WG or CG) and may choose not to fish in the AI if conditions are not favorable. Vessels choosing to not fish in the AI could reduce potential economic benefits to processors in Adak or in other locations in the Aleutian Islands. However, if an LLP license holder were issued an AI area endorsement that could be transferred independently of the LLP license to which it was originally assigned, and at some point the LLP license holder decides to no longer fish in the Aleutian Islands, there could be increased incentive to sell the AI area endorsement, apart from the LLP license. Allowing the AI area endorsement to be severable from the LLP license to which it is originally assigned would avoid a situation in which AI endorsements would be irrevocably tied to LLP licenses that were not being used on vessels operating in the Aleutian Islands. The Council concluded that allowing severable AI endorsements would not lead to excess effort in the AI regulatory area.

The Council determined that the ability to sever endorsements for LLP license was not necessary for the AI area endorsements derived from vessels that are equal to or greater than 60 feet LOA. As noted earlier, the Council sought to balance the objectives of reducing latent fishing capacity in the first action included in this rule with the goal of providing additional harvesting and

processing alternatives in the Aleutian Islands.

Assigning an AI Area Endorsement to a Specific LLP License

Because the landing criteria to qualify for an AI area endorsement are primarily based on landings with fish caught within State waters, some qualifying landings have been made by vessels that did not have LLP licenses assigned to them at the time the landings were made. Vessels fishing exclusively within the jurisdiction of the State in State waters are not under the jurisdiction of the Council and so are not required to be assigned an LLP license. Therefore, NMFS will use two methods to assign any new AI area endorsements to an LLP license to ensure that there is a linkage between the landings made by a non-AFA catcher vessel that fished in State waters and a specific LLP license.

The first method is applicable to non-AFA catcher vessels less than 60 feet LOA that meet the requisite minimum 500 mt landings requirement to receive an AI endorsement. NMFS will assign an AI endorsement based on the landings of a non-AFA trawl catcher vessel to an LLP license that 1) designates that non-AFA vessel on the effective date of this regulation; 2) was not derived in whole or in part from the qualifying fishing history of an AFA vessel; 3) has a trawl gear designation; 4) does not have a catcher/processor vessel designation; 5) does not have an MLOA equal to or greater than 60 feet; and 6) has at least 500 mt of Pacific cod landings using trawl gear harvested from the parallel fishery adjacent to the Aleutian Islands Subarea during the period from January 1, 2000, through December 31, 2006.

The second method is applicable to non-AFA catcher vessels equal to or greater than 60 feet LOA that meet the requisite minimum 1,000-mt-landings requirement to receive an AI area endorsement. NMFS will assign an AI area endorsement based on the landings of a non-AFA trawl catcher vessel to an LLP license that 1) designates that non-AFA vessel on the effective date of this regulation; 2) was not derived in whole or in part from the qualifying fishing history of an AFA vessel; 3) has a trawl gear designation; 4) does not have a catcher/processor vessel designation; and 5) has at least 1,000 mt of landings of Pacific cod using trawl gear harvested from the BSAI made under the authority of that LLP license during the period from January 1, 2000, through December 31, 2006, according to the official record created by NMFS.

These requirements would ensure that the AI area endorsement is assigned to an LLP license that can only be used on a non-AFA trawl catcher vessel consistent with the Council's intent. NMFS will establish a rebuttable presumption that an AI area endorsement will be assigned to the LLP license that designates the non-AFA trawl catcher vessel on the effective date of this rule. This presumption ensures that an AI area endorsement is issued to a specific LLP license that is actively being used on the vessel that met the requisite landing requirements.

If the official record shows that, on the effective date of this rule, the owner of a vessel that meets the AI endorsement landing criteria does not hold an LLP license to which an AI area endorsement may be assigned, the vessel owner will have the opportunity to provide additional information and challenge NMFS's presumption to designate an otherwise eligible LLP license. Similarly, if the vessel owner disagrees with NMFS's designation of the LLP license to which the AI area endorsement is assigned, the vessel owner will have the opportunity to provide additional information and challenge NMFS's designation and have the AI area endorsement assigned to an otherwise eligible LLP license. Should the owner of a vessel meeting the AI endorsement requirements subsequently receive an LLP license (i.e., purchase an LLP license) that is otherwise eligible to be assigned an AI endorsement (i.e., it is a non-AFA, trawl catcher vessel endorsed LLP license with the appropriate MLOA), the vessel owner can request that NMFS assign the AI endorsement to that LLP license. Otherwise, NMFS will assign the AI endorsement to the LLP license specified in the amended official record.

Transfers of AI Endorsements

Only LLP AI area endorsements for vessels less than 60 feet LOA are transferrable separate from the LLP. To facilitate the transfers, NMFS modified LLP license transfer regulations at § 679.4(k)(7) to clarify the process for transferring an AI area endorsement independent of the LLP license. NMFS specified that a new AI area endorsement may be transferred from the LLP license to which it was originally issued to another LLP license that (1) was not derived in whole or in part from the qualifying fishing history of an AFA vessel; (2) has a catcher vessel designation; (3) has a trawl gear designation; (4) has an MLOA of less than 60 feet LOA; and (5) has an MLOA that is not longer than the MLOA designated on the LLP license to which

that AI endorsement was originally issued. These limitations would meet the Council's intent to provide opportunities for LLP licenses used on smaller non-AFA catcher vessels.

The voluntary transfer process for an AI area endorsement is similar to the procedures currently in place for transferring an LLP license. First, a person seeking to transfer an AI area endorsement must submit a complete transfer application for an LLP license to the Regional Administrator as described under § 679.4(k)(7). As part of that application process, the person must specify the specific LLP license to which the transferred AI area endorsement will be assigned. NMFS will not approve the transfer unless the AI area endorsement was assigned for transfer to an LLP license that met the five requirements specified above.

This rule also will modify LLP license transfer regulations at § 679.4(k)(7)(v) to clarify that the Regional Administrator will transfer an AI area endorsement based on a court order, operation of law, or a security agreement if the Regional Administrator determines that the transfer application is complete and the transfer will not otherwise violate any of the provisions relating to LLP license transfers. This change is necessary to ensure that AI endorsements are treated in the same manner that applies to LLP licenses in general.

NMFS will apply the same limitations on the number of transfers of AI area endorsements that currently exist for LLP licenses. This limitation ensures that AI endorsements are not traded in a manner that could substantially increase the potential number of vessels actively fishing in the AI area, and would subject AI endorsements to the same transfer restrictions applicable to LLP licenses. Specifically, an AI area endorsement can be voluntarily transferred only once in any calendar year. A voluntary transfer is a transfer other than one pursuant to a court order, operation of law, or a security agreement. NMFS will not approve an application for transfer that will cause a person to exceed the transfer limit of this provision. NMFS will consider any transfer of an AI endorsement from one LLP license to another LLP license, or the transfer of an LLP license to which an AI endorsement is affixed, as a voluntary transfer of an AI endorsement. This provision is consistent with the Council's intent to limit the transfer of AI area endorsements in the same manner as those applicable to LLP licenses.

Process for Removing Latent Trawl Endorsements and Assigning New AI area Endorsements

NMFS will create an official record with all relevant information necessary to assign landings to specific LLP licenses. As explained earlier in this preamble, NMFS did not track the use of specific LLP licenses onboard specific vessels during 2000 and 2001. Because NMFS cannot assign landings made aboard specific vessels to specific LLP licenses during this time period, NMFS will assume that any landings made by a vessel during 2000 and 2001 will be assigned to the LLP license derived from that vessel. Prior to modifying any LLP licenses, NMFS will notify all trawl LLP license holders of the status of their LLP license endorsements (i.e., whether they will retain or lose their endorsements for specific regulatory areas, or will be eligible to receive an AI area endorsement). Should an LLP license holder disagree with NMFS's official record, NMFS will provide an opportunity for any person to submit information to rebut the assumptions made by NMFS.

The official record created by NMFS will contain vessel landings data and the LLP licenses to which those landings would be attributed. Evidence of the number and amount of landings would be based only on legally submitted NMFS weekly production reports for catcher/processors and State fish tickets for catcher vessels. Historically, NMFS has only used these two data sources to determine the specific amount and location of landings, and NMFS will continue to do so under this action. The official record will also include the records of the specific LLP licenses assigned to vessels and other relevant information necessary to attribute landings to specific LLP licenses. NMFS will presume the official record is correct, and a person wishing to challenge the presumptions in the official record will bear the burden of proof through an evidentiary and appeals process.

NMFS will mail a notification to each trawl LLP license holder to the address on record at the time the notification is sent about the status of each regulatory area endorsement for that LLP license. NMFS will provide a single 30-day evidentiary period from the date that notification is sent for an LLP holder to submit any supporting information, or evidence, to verify that the information contained in the official record is inconsistent with his or her records.

An LLP license holder who submits claims that are inconsistent with information in the official record will

have the burden of proving that the submitted claims are correct. NMFS will not accept inconsistent claims unless verified by clear written documentation. NMFS will evaluate the additional information or evidence to support an LLP license holder's inconsistent claims submitted from the effective date of this regulation and within the 30-day evidentiary period. If NMFS determines that the additional information or evidence proves that the LLP license holder's inconsistent claims were indeed correct, NMFS will act in accordance with that information or evidence. However, if after the 30-day evidentiary period, NMFS determines that the additional information or evidence did not prove that the LLP license holder's inconsistent claims were correct, NMFS will deny the claim. NMFS will notify the applicant that the additional information or evidence did not meet the burden of proof to overcome the official record through an initial administrative determination (IAD). An applicant can appeal an IAD. The appeals process is described under § 679.43. A person who appeals an IAD will be eligible to use the disputed LLP license with the endorsements listed on the LLP license until final action by NMFS on the appeal. NMFS will reissue any LLP licenses pending final action by NMFS as interim LLP licenses. NMFS will prohibit the transfer of an interim LLP license until the appeal is resolved.

If a person does not dispute the notification of changes in their LLP license endorsements, or upon the resolution of any inconsistent claims, a revised LLP license with the appropriate endorsements will be reissued to the LLP license holder. In cases where all endorsements on a LLP license with only a trawl endorsement are extinguished, NMFS will not reissue the LLP license because it would no longer be valid for use with trawl gear in any management area.

Housekeeping Revisions to LLP Transfer Application and Permit Regulations

This rule modifies regulations at § 679.4(k)(7)(iii) to consolidate and clarify the regulations describing the contents of the LLP transfer application. In addition, this rule modifies the regulations at § 679.7(i)(2) through (5), and § 679.7(i)(8)(i) to replace the requirement that a person must have the original LLP license onboard to conduct directed fishing for license limitation groundfish, fish for LLP crab or scallops, or process those species with a requirement that a legible copy of the license will suffice.

Response to Comments

Comment 1: NMFS should consider a wider range of documentary evidence to establish that a vessel made the requisite qualifying landings. The commenter notes NMFS will consider only legal landings that are documented on State of Alaska (State) fish tickets or NMFS weekly production reports as the basis for establishing whether a specific LLP license meets the requirements to retain its trawl endorsements. Because a legal landing had to be properly recorded on a State fish ticket or weekly production report, the ability of a person to use other documentation to challenge NMFS's official record for determining whether an LLP license meets the qualification is meaningless. Although legal landings must be recorded on a State fish ticket or weekly production report, other documentary evidence establishing that landings were recorded but not in NMFS's official record should be accepted. State of Alaska law limits the ability of a vessel owner to review State fish ticket records without the consent of the vessel skipper, thereby limiting the ability of a person to challenge NMFS's official record based on those records. Therefore, a person's right to challenge NMFS's official record is meaningless and a violation of due process privileges.

Response: NMFS has used State fish tickets and NMFS weekly production reports as the most reliable and accurate information to establish landings in a variety of programs (e.g., Amendment 80 Program, and Central GOA Rockfish Program). The commenter does not propose that NMFS should use other sources for establishing a legal landing, but that NMFS should accept other information that a landing occurred but that landing was not, for whatever reason, properly submitted to NMFS or is not otherwise available in NMFS's official record. If NMFS and the commenter agree that only State fish tickets or NMFS weekly production reports should be used to certify a landing, then it is not clear how any other information could be considered as evidence of a landing.

NMFS will provide an LLP holder with the opportunity to submit information, including other documentary evidence, to challenge NMFS's official record. Even though other documentary evidence is not proof of a legal landing, this information can result in NMFS modifying the official record. For example, a person could submit landing settlements or other records that lead NMFS or the State to investigate the official record. This

investigation could determine that a State fish ticket or NMFS weekly production report was misfiled by the State or NMFS, applied to the wrong vessel, or subject to some other error that could result in NMFS modifying the official record. An LLP license holder has a meaningful opportunity to present information to NMFS that could result in changes to the official record.

NMFS provides adequate opportunity for a person to challenge an agency decision. As noted in the preamble, NMFS will provide each LLP license holder with a single 30-day evidentiary period to submit any information to challenge the official record (79 FR 79785). If NMFS does not accept the information submitted and does not modify the official record, NMFS will issue an Initial Agency Determination (IAD) rejecting a claim. After an IAD is issued, an LLP license holder can pursue a challenge to the official record through the use of an appeals process established in regulation at § 679.43. NMFS will not revoke or extinguish an LLP license endorsement until the appeal process has concluded.

The commenter's concern about State confidentiality requirements for the release of State fish tickets is outside the scope of this action. NMFS does not have the authority to modify State statutes.

Comment 2: NMFS should clarify that those persons eligible to receive an AI trawl endorsement must designate the qualifying vessel on an eligible LLP license as of the effective date of the proposed regulations to receive the endorsement. To do otherwise, or to hold AI endorsements in regulatory limbo until the potential recipient obtains a qualifying LLP license to couple with that endorsement, will create too much uncertainty and limit the ability of NMFS to manage the fishery because of the potential increase in harvesting capacity associated with the AI trawl endorsements.

Response: In cases where a person does not hold an LLP license, but is otherwise eligible to receive an AI endorsement, NMFS will withhold issuing that AI endorsement until such time as that person holds an LLP license with the requisite endorsements and MLOA appropriate for that endorsement. Extinguishing an AI endorsement if a person does not hold an LLP license within some time frame after the implementation of this regulation was not specifically addressed by the Council during the development of this provision; establishing such a provision now would require new rulemaking and would prohibit otherwise eligible

persons from receiving an AI endorsement. Choosing to withhold the issuance of an AI trawl endorsement until the potential recipient obtains the appropriate LLP license does not undermine the ability of NMFS to carry out its fishery management responsibilities. If an AI endorsement is issued to an LLP license at some point in the future, NMFS is able to track the specific LLP license to which the endorsement is assigned, the vessel to which an LLP license is assigned, and the fisheries that a vessel operator is actively fishing by communicating with the operator or by monitoring the vessel electronically through the vessel monitoring system. NMFS can monitor that vessel's landings through mandatory catch reports. NMFS can use this information to adjust management actions to account for the harvest activity of a vessel to which an AI endorsement is assigned by closing fisheries earlier to accommodate any increased effort due to additional AI endorsements.

In response to this comment, NMFS has modified the regulations at 679.4(k)(4)(ix)(C) and (D) to state that a person may designate the LLP license to which the AI endorsement is assigned when an endorsement is issued by NMFS. If a person otherwise eligible to receive an AI endorsement does not hold an LLP license to which an AI endorsement may be assigned at the time this rule takes effect, an otherwise eligible LLP license may be designated by that person in the future, such as when the person has purchased an eligible LLP license. Furthermore, NMFS concluded that the proposed regulatory text did not clearly state that a person could select a specific eligible LLP license if more than one was held by the person eligible for the AI endorsement. This change ensures that a person can amend the official record once that person holds an eligible LLP to be assigned an AI endorsement. This change clarifies that this amendment does not require a challenge to the official record. Although these changes modify the proposed process for assigning AI endorsements to LLP licenses, they do not change the intent of this provision.

Comment 3: NMFS should reissue trawl licenses for which all area endorsements are extinguished to facilitate the use of the AI trawl endorsements. Extinguishing a trawl endorsed LLP license if all of the area endorsements assigned to that license are no longer valid would be appropriate in most cases. However, allowing an LLP license holder to be able to transfer an AI endorsement onto

an LLP license that would otherwise be extinguished would provide some minimal value to some of the licenses that would otherwise be extinguished under this amendment package.

Response: Adopting the commenter's suggestion would have the effect of requiring that NMFS maintain latent trawl LLP licenses so that an AI endorsement could be transferred onto any LLP license at some indeterminate point in the future. This would frustrate the overall goal of this action, which is to remove area endorsements, and potentially LLP licenses, that have not met the minimum landing requirements. The action recommended by the Council did not include a provision to reissue LLP licenses that are extinguished under this action. Including such a provision now would be contrary to the purpose and need for this action and the clear intent of the Council. In an action that amended eligibility to hold crab LLP licenses (September 24, 2001; 66 FR 48813), NMFS extinguished those LLP licenses that no longer had any eligible endorsements, and a consistent approach would be used for this action.

Comment 4: Permitting LLP license holder to maintain a legible copy of an LLP license on their vessel while fishing or processing, as opposed to the original LLP license, will greatly benefit participants in the fisheries. Maintaining an original LLP license onboard a vessel can impose significant costs on the industry during fishing due to expedited delivery costs and incidental costs incurred while waiting for an original LLP license to arrive. This change is long overdue.

Response: NMFS agrees and notes the support.

Comment 5: Remove latent trawl LLP licenses as described in the proposed rule. The proposed rule provides active participants with stability and insures some amount of protection of their investments in, and dependency on, the North Pacific fisheries. The threshold landing requirement does not harm LLP holders who are active in the fisheries and who show a dependency in such fisheries. Maintain the exemption to allow WG or CG endorsements to remain valid if at least 20 landings were made during the qualifying period, and the exemption for LLP licenses required for specific LAPPs.

Response: NMFS notes the support for this action. NMFS notes that this action removes trawl endorsements. NMFS will be extinguishing, or removing, LLP licenses only in cases where all endorsements on an LLP license are extinguished (see response to Comment 3 for additional detail).

Comment 6: The commenter opposes the creation of new LLP endorsements for catcher vessels in the Aleutian Islands. This action is contrary to one of the central goals of the LLP Program as originally implemented. The action would not meet the goals stated in the preamble to the proposed rule. The rationale for this action is: the economic development of Adak, Alaska; the development of an under 60 foot vessel fleet to harvest the AI pollock quota given to the Aleut Corporation; and the development of a resident fleet for Adak.

This action will not contribute to the economic development for Adak. Because most participants in the AI fishery, including those that would receive new endorsements, have chosen not to deliver to Adak, increasing participation by issuing new federal endorsements could negatively impact Adak by attaining catch quotas and closing the fishery earlier without increasing deliveries to Adak fisheries. No new under-60-foot endorsements are needed to harvest AI pollock allocated to the Aleut Corporation because an AI endorsement is not required for those vessels. The creation of 12 new AI area endorsements will not develop a resident fleet of vessels for Adak. None of the vessel owners slated to receive the new endorsements are residents of Adak. The owners of the vessels that participated in the State Water AI Pacific cod fishery either live in Washington or Gulf of Alaska communities. More importantly, all have LLP licenses in other regions and are more dependent on fisheries in other regions.

Increased participation in the AI subarea would increase fishing pressure in relation to the regional distribution of BSAI Pacific cod biomass. The most harm would be caused by issuance of new area endorsements that are severable and transferable, an action that even one of the recipients of such a new transferable LLP area endorsement testified to the Council that he did not want. This is contrary not only to the original purpose of this action, it contradicts the purpose of the LLP which prohibits the severability and transfer of endorsements because it will increase rather than limit participation. In creating these new endorsements, Adak would be hurt because the influx of new participants would likely cause the trawl catcher vessel Pacific cod fishery to be shortened.

Response: As noted in the preamble to the proposed rule, this action would provide additional harvest opportunities to a specific group of LLP holders based

on the catch history of vessels that have been active in AI parallel water fisheries in recent years. This action is intended to modify the LLP Program as originally implemented by NMFS, and the Council adopted a separate purpose and need statement to support this action. The Council is not restricted from modifying the LLP provided it is consistent with applicable law. The preamble to the proposed rule notes that this action is primarily intended to provide additional flexibility to vessels that are active in the Aleutian Islands and could provide additional opportunities for shorebased processors, but such opportunities were not guaranteed. Specifically, the preamble to the proposed rule (73 FR 79780) stated:

LLP license holders who are issued new AI trawl endorsements would be provided with additional harvest opportunities in Federal waters that could be more economic to harvest. Processing facilities in the Aleutians, specifically those located in the communities of Adak and Atka, could benefit from access to Federal resources that could be more economically processed than fishery resources available only in State waters.

The commenter's assertion that this action would not result in additional deliveries to Adak cannot be verified by NMFS because there is no way to predict choices that vessel operators will make in the future about their fishery deliveries. As noted in the preamble to the proposed rule, this action is not intended to ensure that additional deliveries will occur at a specific port, but that the catcher vessel fleet will have additional harvesting opportunities in Federal waters that did not previously exist. Those additional harvest opportunities could provide additional processing for shorebased facilities in Adak and Atka. This action does not guarantee that additional deliveries will occur at these ports, or any other specific port.

Contrary to the commenter's assertion, the Council did not recommend this action to provide opportunities for the harvest of Aleutian Islands pollock. As noted in the preamble to the proposed rule, "these new AI area endorsements would provide additional opportunities for catcher vessels to harvest and process Pacific cod in the Aleutian Islands. Pacific cod is the groundfish species most frequently targeted by non-AFA catcher vessels in the State GHL and parallel fisheries in the Aleutian Islands; therefore the Council used those landings as the basis for determining eligibility to receive an AI area endorsement (73 FR 79780). The analysis used to support this action also notes that the primary benefits of this

action would be for those active in the Atka mackerel, Pacific ocean perch, and Pacific cod fisheries (see section 2.8.2).

NMFS cannot confirm the commenter's assertion that the recipients of the AI endorsement will choose not to deliver catch to a specific port. Again, this action does not mandate delivery to specific ports and the Council did not intend that specific ports would receive a specific portion of the catch, nor did the Council guarantee such a result. As noted in section 2.7.5.4 of the analysis prepared for this rule "there is no guarantee that these AI endorsements would be used to fish groundfish in the AI, or be used by vessels that would choose to "homeport", or deliver to a shoreside processing plant, in Adak. The creation of the endorsements, and their potential severability and transferability, however, may provide an opportunity to facilitate economic development in Adak, compared to the status quo."

The Council and NMFS were aware that this action could have distributional effects on the specific participants who are active in Aleutian Islands groundfish fisheries. Specifically, the preamble to the proposed rule (73 FR 79773) notes that:

In recommending this action, the Council balanced the potential benefits against the potential negative effect on existing fishery participants in the Aleutian Islands. This proposed action would not increase the total amount of the TAC harvested in the BSAI. The TAC would continue to limit total harvests. This proposed action could shift the proportion of groundfish harvested by trawl vessels relative to other vessels in the Aleutian Islands thereby affecting the associated ex-vessel revenues for existing fishery participants.

The commenter's assertion that this action will result in increased fishing pressure on the regional distribution of the BSAI Pacific cod biomass is based on assumptions about the potential distribution of the Pacific cod biomass that have not been reviewed by the Council or NMFS. The Pacific cod fishery is constrained by the Pacific cod TAC specified annually for the BSAI. Based on data from a variety of sources, the Council is reviewing the potential implications of apportioning the Pacific cod TAC between the Bering Sea and Aleutian Islands. As that analysis is developed, the Council and NMFS will consider fishing practices in the Bering Sea and Aleutian Islands, and may recommend changes to fishery management program that may be necessary to accommodate a TAC apportionment. However, based on the best available information at this time, issuing a limited number of additional

AI endorsements that are likely to be used on vessels that are already active in harvesting BSAI Pacific cod in the Aleutian Islands parallel water fishery would not be likely to cause the BSAI Pacific cod fishery to close earlier than it does currently. The Council did review and consider the potential effects of this action on current Aleutian Islands harvesters and processors during its deliberative process and in section 2.7.5 of the analysis prepared for this action.

Comment 7: The commenter supports designating LLP licenses as non-transferable while any appeals on the status of an LLP license endorsement are resolved. However, past experience suggests that the appeal process can be very lengthy, particularly for resolving LLP license appeals. While an LLP is under appeal it is still valid and may be used until the appeals process is completed. If the appeals process is lengthy, the net effect is that a regulation intended to reduce latent capacity does not fully accomplish its goal. The Alaska Region Office of Administrative Appeals should resolve any appeals quickly. In the Pacific groundfish fishery, regulations are in place that requires appeals to be resolved within 30 or 45 days. A similar timeline for resolution of appeals for this action would seem to be appropriate.

Response: NMFS notes the support for designating LLP licenses as non-transferable while under appeal. NMFS intends to move expeditiously to resolve all appeals in a timely manner, but a specific timeline for resolving appeals is difficult to predict given the wide range of issues that may be addressed under appeal. The Council considered and rejected a fixed timeline similar to the one used in the Pacific groundfish fishery to resolve appeals given the potential that complexities may arise during a specific appeal that could require more than the 30 or 45 days.

Comment 8: Although the proposed rule suggests that removing latent trawl LLP licenses became a consideration in early 2007, this issue came before the Council much earlier. In 2005, the Council considered provisions to remove latent catcher vessel LLP licenses under Amendment 80 and Amendment 85 to the FMP for BSAI groundfish. Additionally, GOA rationalization was under consideration as early as 2003; if adopted, this LAPP would have mooted the issue of latent trawl LLP licenses.

Response: NMFS agrees that the Council has considered modifying the LLP Program prior to this action. However, this action, which specifically

addresses removing latent area endorsements from trawl LLP licenses, was first developed as a separate and distinct action beginning in 2007.

Changes From the Proposed to Final Rule

Based on public comment, NMFS clarified the regulations at § 679.4 (k)(4)(ix)(C) and (D) for assigning AI endorsements.

NMFS made several minor changes in the final rule to clarify specific regulatory text. In § 679.7, NMFS clarified that the copy of the LLP license that may be on a vessel must be a legible copy. This change is consistent with other regulatory requirements that NMFS uses to ensure that copies can be verified by enforcement personnel who may be onboard the vessel.

NMFS made several minor corrections to the regulatory text for grammatical consistency that does not affect the intent of these provisions.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that Amendments 92 and 82 are necessary for the conservation and management of BSAI and GOA groundfish and are consistent with the MSA and other applicable law.

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

Final Regulatory Flexibility Analysis (FRFA)

A FRFA was prepared for this rule, as required by section 604 of the Regulatory Flexibility Act (RFA). Copies of the FRFA prepared for this final rule are available from NMFS (see ADDRESSES). The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action. A summary of the FRFA follows.

Why Action by the Agency is Being Considered and Objectives of, and Legal Basis for, the Rule

The FRFA describes in detail the reasons why this action is being proposed, describes the objectives and legal basis for the rule, and discusses both small and non-small regulated entities to adequately characterize the fishery participants. The MSA provides the legal basis for the rule, as discussed in this preamble. The objectives of the rule are to remove trawl gear endorsements on LLP licenses in specific management areas if those LLP licenses have not been used on vessels

that met minimum recent landing requirements using trawl gear. This action provides exemptions to this requirement for licenses that are used in trawl fisheries subject to certain limited access privilege programs. This action issues new area endorsements for trawl catcher vessel LLP licenses in the Aleutian Islands if minimum recent landing requirements in the Aleutian Islands were met.

Number of Small Entities to Which the Final Rule Would Apply

The directly regulated entities under this proposed rule are holders of LLP licenses endorsed for trawl activity. For purposes of a FRFA, the Small Business Administration (SBA) has established that a business involved in fish harvesting is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates), and if it has combined annual gross receipts not in excess of \$4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

Because the SBA does not have a size criterion for businesses that are involved in both the harvesting and processing of seafood products, NMFS has in the past applied and continues to apply SBA's fish harvesting criterion for these businesses because catcher/processors are first and foremost fish harvesting businesses. Therefore, a business involved in both the harvesting and processing of seafood products is a small business if it meets the \$4.0 million criterion for fish harvesting operations.

Information concerning ownership of vessels and processors, which would be used to estimate the number of small entities that are directly regulated by this action, is somewhat limited. NMFS estimated the number of small versus large entities based on earnings from all Alaskan fisheries for 2006, the most recent year of complete data, from vessels designated on LLP licenses used in the BSAI or GOA groundfish for that year.

Of the trawl catcher vessel licenses with AI, BS, CG, or WG endorsements, 102 are AFA licenses. These are categorized as large entities for the purpose of the RFA under the principles of affiliation, due to their being part of the AFA pollock harvest cooperatives. Of the remaining 130 trawl catcher vessel licenses that are not AFA

licenses, 96 had groundfish landings in 2006, and all are identified as small entities for the purposes of the RFA. This likely overstates the true number of small entities because ownership of multiple vessels, co-ownership among vessels, and other economic and operational affiliations are commonplace in commercial fisheries off Alaska.

Of the trawl catcher/processor LLP licenses with AI, BS, CG, or WG endorsements, 27 are AFA licenses, and thus categorized as large entities, due to their AFA cooperative affiliation. Of the remaining 37 non-AFA trawl catcher/processor LLP licenses, 33 had groundfish landings in 2006. These 33 licenses are estimated to be held by 28 entities, and 24 of those had gross earnings from all fisheries in Alaska over \$4 million, categorizing them as large entities. The remaining 4 are identified as small entities for the purposes of the RFA. Thus, this analysis estimates a total of 100 (96 + 4) small entities will be directly regulated by the action.

Public Comments Received on the IRFA

NMFS received no public comments on the IRFA. A general comment on the economic impacts of the rule is addressed in the Response to Comment section of this preamble (see response to Comment 6).

Projected Reporting, Recordkeeping, and Other Compliance Requirements

This rule modifies existing reporting, recordkeeping, and other compliance requirements. This rule modifies the Application to Transfer an LLP license to include provisions to track the transfer of AI trawl endorsements issued under this rule. It will cost the directly regulated industry an estimated \$56 to complete each application to transfer an AI endorsement.

The Comparison of Alternatives

A FRFA requires a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule which affect the impact on small entities was rejected by the agency.

The Council identified three alternatives for this action. Alternative 1 is the status quo, which would result in no change to the existing area endorsements for trawl groundfish LLPs for the BSAI or GOA. Alternative 2 and

Alternative 3 (Council preferred alternative) result in the application of landings criteria (the range includes one or two landings during 2000 through 2005 or 2000 through 2006) in order to retain the area endorsement (BS, AI, CG, or WG) on a license.

Under either action alternative, including the preferred alternative, the area endorsements on licenses not meeting the threshold would be extinguished. In effect, if the LLP license at issue has one or more area endorsement only for trawl gear and it does not meet the landing threshold for any area selected, the entire license is extinguished. If the LLP license at issue has multiple area endorsements and it does not meet the landing threshold for a specific area, the license would be reissued with only the area endorsements for which it qualifies. The area endorsement for which the license does not qualify would be removed. Note that this action does not affect a license's non-trawl area endorsements.

The primary intent of the amendment is to prevent future economic dislocation among license holders who have a demonstrated history of recent participation in the trawl groundfish fisheries in the BSAI and GOA. As previously noted, the great majority of the directly regulated entities under this action are considered "small" as defined under the RFA. Within the universe of small entities that are the subject of this FRFA, impacts may accrue differently (i.e., some small entities would be negatively affected and others positively affected.) Thus, the action represents tradeoffs in terms of impacts on small entities. However, the Council deliberately sought to provide options for the smallest of the small entities under this amendment through Component 4, Options 1 and 3.

Component 4, Option 1, awards an estimated eight new AI endorsements to non-AFA trawl catcher vessel LLP licenses with less than 60 foot MLOA that meet a specified landing threshold (greater than 500 mt) in the AI parallel Pacific cod fishery from 2000 through 2006. Component 4, Option 3 allows those new AI endorsements to be severable and transferable from the license on which they were earned, thus allowing new participation by non-AFA trawl catcher vessels less than 60 feet LOA. It is reasonable to assume that the same proportion of licenses assigned to vessels less than 60 feet LOA would be small entities.

Overall, it is unlikely that this action will result in extinguishing the licenses of vessels for which LLP license holders had a high degree of economic dependence upon the trawl groundfish

fisheries, as one would have to have had little to no participation in the fisheries since 2000 in order to forfeit an area endorsement under this action. Based upon the best available scientific data and information, and consideration of the objectives of this action, it appears that there are no alternatives to the action which have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that have the potential to minimize any significant adverse economic impact of the proposed rule on directly regulated small entities.

Collection-of-Information

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under Control Number 0648-0334. Public reporting burden is estimated to average two hours for the Application to Transfer an LLP license and four hours for an appeal of an initial administrative determination 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.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

Small Entity Compliance Guide

NMFS has posted a small entity compliance guide on its website at <http://www.alaskafisheries.gov> to satisfy the Small Business Regulatory Enforcement Fairness Act of 1996 requirement for a plain language guide to assist small entities in complying with this rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: August 10, 2009.

John Oliver,

Deputy Assistant Administrator For Operations, National Marine Fisheries Service.

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

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

Authority: 16 U.S.C. 773 *et seq.*; 1540; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108-447.

■ 2. In § 679.4,

A. Paragraphs (k)(4)(vi) through (k)(4)(x) are added; and

B. Paragraphs (k)(7)(i), (k)(7)(ii) introductory text, (k)(7)(iii), (k)(7)(v), (k)(7)(vi), and (k)(7)(viii)(A) are revised.

The additions and revisions read as follows:

§ 679.4 Permits.

* * * * *

(k) * * *

(4) * * *

(vi) *Trawl gear designation recent participation requirements.* (A) NMFS will revoke any trawl gear designation on a groundfish license with an Aleutian Island, Bering Sea, Central Gulf, or Western Gulf regulatory area unless one of the following conditions apply:

(1) A person made at least two legal landings using trawl gear under the authority of that groundfish license in that regulatory area during the period from January 1, 2000, through December 31, 2006; or

(2) That trawl gear designation endorsed in that area is exempt from the requirements of this paragraph (k)(4)(vi)(A) as described under paragraphs (k)(4)(vii) or (k)(4)(viii) of this section.

(B) NMFS shall assign a legal landing to a groundfish license for an area based only on information contained in the official record described in paragraph (k)(4)(x) of this section.

(vii) *Exemption to trawl gear recent participation requirements for the AFA, Amendment 80 Program, and Rockfish Program.* (A) Trawl gear designations with Bering Sea or Aleutian Islands area endorsements on a groundfish license that was derived in whole or in part from the qualifying fishing history of an AFA vessel are exempt from the landing requirements in paragraph (k)(4)(vi) of this section.

(B) Trawl gear designations with Bering Sea or Aleutian Islands area endorsements on a groundfish license are exempt from the landing requirements in paragraph (k)(4)(vi) of this section provided that all of the following conditions apply:

(1) The groundfish license was not derived in whole or in part from the qualifying fishing history of an AFA vessel;

(2) The groundfish license is assigned to an AFA vessel on August 14, 2009; and

(3) No other groundfish license with a Bering Sea or Aleutian Island area endorsement is assigned to that AFA vessel on August 14, 2009.

(C) Trawl gear designations with Bering Sea or Aleutian Islands area endorsements on a groundfish license that is listed in Column C of Table 31 to this part are exempt from the landing requirements in paragraph (k)(4)(vi) of this section.

(D) A trawl gear designation with Central Gulf area endorsement on a groundfish license that is assigned Rockfish QS is exempt from the landing requirements in paragraph (k)(4)(vi) of this section.

(viii) *Exemption to trawl gear recent participation requirements for groundfish licenses with a Central Gulf or Western Gulf area endorsement.* A trawl gear designation with a Central Gulf or Western Gulf area endorsement on a groundfish license is exempt from the landing requirements in paragraph (k)(4)(vi) of this section provided that a person made at least 20 legal landings under the authority of that groundfish license in either the Central Gulf or Western Gulf area using trawl gear during the period from January 1, 2005, through December 31, 2007.

(ix) *Aleutian Island area endorsements for non-AFA trawl catcher vessels.* (A) If a non-AFA catcher vessel that is less than 60 feet LOA was used to make at least 500 mt of legal landings of Pacific cod using trawl gear from the waters that were open by the State of Alaska for which it adopts a Federal fishing season adjacent to the Aleutian Islands Subarea during the period from January 1, 2000, through December 31, 2006, according to the official record, NMFS shall issue an Aleutian Island area endorsement with a trawl gear designation to a groundfish license assigned to the vessel owner according to the official record, provided that the groundfish license assigned to that non-AFA catcher vessel meets all of the following requirements:

(1) It was not derived in whole or in part from the qualifying fishing history of an AFA vessel;

(2) It has a trawl gear designation;

(3) It does not have a catcher/processor vessel designation; and

(4) That groundfish license has an MLOA of less than 60 feet.

(B) If a non-AFA catcher vessel that is equal to or greater than 60 feet LOA was used to make at least one legal landing in State of Alaska waters adjacent to the Aleutian Islands Subarea using trawl gear during the period from January 1,

2000, through December 31, 2006, or one landing of Pacific cod from the State of Alaska Pacific cod fishery during the period from January 1, 2000, through December 31, 2006, according to the official record, NMFS shall issue an Aleutian Island area endorsement with a trawl gear designation to a groundfish license assigned to the vessel owner according to the official record, provided that the groundfish license assigned to that non-AFA catcher vessel meets the following criteria:

(1) It was not derived in whole or in part from the qualifying fishing history of an AFA vessel;

(2) It has a trawl gear designation;

(3) It does not have a catcher/processor vessel designation; and

(4) At least 1,000 mt of legal landings of Pacific cod using trawl gear in the BSAI were made under the authority of that groundfish license during the period from January 1, 2000, through December 31, 2006, according to the official record.

(C) NMFS will assign the AI endorsement to an eligible groundfish license held and designated by the vessel owner beginning on August 14, 2009.

(D) If the vessel owner does not hold a groundfish license to which an AI endorsement may be assigned on August 14, 2009 according to the official record, the vessel owner will have the opportunity to amend the official record as described in paragraph (k)(4)(x) of this section to designate an otherwise eligible groundfish license. If the official record is subsequently amended, NMFS will assign the AI endorsement to the groundfish license specified in the amended official record.

(x) *Trawl gear recent participation official record.* (A) The official record will contain all information used by the Regional Administrator to determine the following:

(1) The number of legal landings assigned to a groundfish license for purposes of the trawl gear designation participation requirements described in paragraph (k)(4)(vi) of this section;

(2) The amount of legal landings assigned to a groundfish license for purposes of the AI endorsements described in paragraph (k)(4)(ix) of this section;

(3) The owner of a vessel that has made legal landings that may generate an AI endorsement as described in paragraph (k)(4)(ix) of this section; and

(4) All other relevant information necessary to administer the requirements described in paragraphs (k)(4)(vi) through (k)(4)(ix) of this section.

(B) The official record is presumed to be correct. A groundfish license holder has the burden to prove otherwise. For the purposes of creating the official record, the Regional Administrator will presume the following:

(1) A groundfish license is presumed to have been used onboard the same vessel from which that groundfish license was derived, the original qualifying vessel, during the calendar years 2000 and 2001, unless clear and unambiguous written documentation is provided that establishes otherwise;

(2) 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;

(3) The groundfish license to which an AI endorsement described in paragraph (k)(4)(ix) of this section will be initially assigned.

(C) 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.

(D) 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.

(E) 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 a 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.

* * * * *

(7) * * *

(i) *General.* The Regional Administrator will transfer a groundfish license, Aleutian Island area endorsement as described under paragraph (k)(7)(viii)(A) of this section, or a crab species license if a complete transfer application is submitted to Restricted Access Management, Alaska Region, NMFS, and if the transfer meets the eligibility criteria as specified in paragraph (k)(7)(ii) of this section. A transfer application form may be requested from the Regional Administrator.

(ii) *Eligibility criteria for transfers.* A groundfish license, Aleutian Island area endorsement as described under paragraph (k)(7)(viii)(A) of this section, or crab species license can be transferred if the following conditions are met:

* * * * *

(iii) *Contents of application.* To be complete, an application for a groundfish license, Aleutian Island area endorsement as described under paragraph (k)(7)(viii)(A) of this section transfer, or a crab species license transfer must be legible, have notarized and dated signatures of the applicants, and the applicants must attest that, to the best of the applicant's knowledge, all statements in the application are true. An application to transfer will be provided by NMFS, or is available on the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>. The acceptable submittal methods will be specified on the application form.

* * * * *

(v) *Transfer by court order, operation of law, or as part of a security agreement.* The Regional Administrator will transfer a groundfish license, Aleutian Island area endorsement as described under paragraph (k)(7)(viii)(A) of this section, or a crab species license based on a court order, operation of law, or a security agreement if the Regional Administrator determines that the transfer application is complete and the transfer will not violate any of the provisions of this section.

(vi) *Voluntary transfer limitation.* A groundfish license, Aleutian Island area endorsement as described under paragraph (k)(7)(viii)(A) of this section, or a crab species license may be voluntarily transferred only once in any calendar year. A voluntary transfer is a transfer other than one pursuant to a court order, operation of law, or a

security agreement. An application for transfer that would cause a person to exceed the transfer limit of this provision will not be approved. A transfer of an Aleutian Island area endorsement as described under paragraph (k)(7)(viii)(A) of this section to another LLP license, or the transfer of a groundfish license with an Aleutian Island area endorsement as described under paragraph (k)(7)(viii)(A) of this section attached to it will be considered to be a transfer of that Aleutian Island area endorsement.

* * * * *

(viii) * * *

(A) Area endorsements or area/species endorsements specified on a license are not severable from the license and must be transferred together, except that Aleutian Island area endorsements on a groundfish license with a trawl gear designation issued under the provisions of paragraph (k)(4)(ix)(A) of this section and that are assigned to a groundfish license with an MLOA of less than 60 feet LOA may be transferred separately from the groundfish license to which that Aleutian Island area endorsement was originally issued to another groundfish license provided that the groundfish license to which that Aleutian Island endorsement is transferred:

- (1) Was not derived in whole or in part from the qualifying fishing history of an AFA vessel;
- (2) Has a catcher vessel designation;
- (3) Has a trawl gear designation;
- (4) Has an MLOA of less than 60 feet LOA; and
- (5) A complete transfer application is submitted to the Regional Administrator as described under this paragraph (k)(7), and that application is approved.

* * * * *

■ 3. In § 679.7, paragraphs (i)(2) through (i)(5), and paragraph (i)(8)(i) are revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(i) * * *

- (2) Conduct directed fishing for license limitation groundfish without a legible copy of a valid groundfish license, except as provided in § 679.4(k)(2);
- (3) Conduct directed fishing for LLP crab species without a legible copy of a valid crab license, except as provided in § 679.4(k)(2);
- (4) Process license limitation groundfish on board a vessel without a legible copy of a valid groundfish license with a catcher/processor designation;
- (5) Process LLP crab species on board a vessel without a legible copy of a valid

crab species LLP license with a catcher/processor designation;

* * * * *

(8) * * *

(i) Without a copy of a valid scallop license on board;

* * * * *

[FR Doc. E9-19568 Filed 8-13-09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[Docket No. 080630808-91192-03]

RIN 0648-AW97

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea/Aleutian Islands Crab Rationalization Program; Amendment 28

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations implementing Amendment 28 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). These regulations amend the Bering Sea/Aleutian Islands Crab Rationalization Program to allow post-delivery transfers of all types of individual fishing quota and individual processing quota to cover overages. This action is necessary to improve flexibility of the fleet, reduce the number of violations for overages, reduce enforcement costs, and allow more complete harvest of crab allocations. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: Effective September 14, 2009.

ADDRESSES: This action was categorically excluded from the need to prepare an environmental assessment or environmental impact statement under the National Environmental Policy Act. Copies of Amendment 28, the categorical exclusion memorandum, and the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for this action, as well as the Environmental Impact Statement prepared for the Crab Rationalization Program, may be obtained from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill or Rachel Baker, 907-586-7228.

SUPPLEMENTARY INFORMATION: The king and Tanner crab fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) are managed under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). The FMP was prepared by the North Pacific Fishery Management Council under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Amendments 18 and 19 to the FMP implemented the BSAI Crab Rationalization Program (CR Program). Regulations implementing Amendments 18 and 19 were published on March 2, 2005 (70 FR 10174), and are located at 50 CFR part 680.

Background

Under the CR Program, NMFS issued quota share (QS) to persons based on their qualifying harvest histories in the BSAI crab fisheries during a specific time period. Each year, the QS issued to a person yields an amount of individual fishing quota (IFQ), which is a permit that provides an exclusive harvesting privilege for a specific amount of raw crab pounds, in a specific crab fishery, in a given season. The size of each annual IFQ allocation is based on the amount of QS held by a person in relation to the total QS pool in a crab fishery. For example, a person holding QS equaling 1 percent of the QS computation pool in a crab fishery receives IFQ to harvest 1 percent of the annual total allowable catch (TAC) in that crab fishery. Catcher/processor license holders were allocated catcher/processor vessel owner (CPO) QS for their LLP license's history as catcher/processors; catcher vessel license holders were issued catcher vessel owner (CVO) QS based on their LLP license's catcher vessel history.

Under the CR Program, 97 percent of the initial allocation of QS was issued to LLP license holders as CPO or CVO QS. The remaining three percent was issued to vessel captains and crew as "C shares" based on their harvest histories as crew members onboard crab fishing vessels. Of the CVO IFQ, 90 percent is issued as "A shares," or "Class A IFQ," which, in most fisheries, is subject to regional landing requirements and must be delivered to a processor holding unused individual processor quota (IPQ). This regional landing requirement is commonly referred to as "regionalization." The remaining 10 percent of the annual vessel owner IFQ