

body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Pueblo Memorial Airport, Pueblo, CO.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

#### **PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS**

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

#### **§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

#### **ANM CO E5 Pueblo, CO [Modified]**

Pueblo Memorial Airport, CO  
(Lat. 38°17'21" N., long. 104°29'47" W.)

That airspace extending upward from 700 feet above the surface within 21.8-mile radius of the Pueblo Memorial Airport, and within the 28.8-mile radius of Pueblo Memorial Airport clockwise between the 070° and 133° bearing from the airport; that airspace extending upward from 1,200 feet above the surface bounded on the north by lat. 38°30'00" N., on the east by V–169, on the south by V–210, on the west by a line from lat. 37°37'26" N., long. 105°00'02" W.; to lat. 38°09'25" N., long. 105°08'06" W.; to lat. 38°05'51" N., long. 105°30'49" W.; to lat. 38°10'00" N., long. 105°33'02" W.; to lat. 38°30'00" N., long. 105°33'02" W.; that airspace extending upward from 13,700 feet MSL bounded by a line beginning at lat. 38°09'25" N., long. 105°08'06" W.; to lat. 37°37'26" N., long. 105°00'02" W.; to lat. 37°33'30" N., long. 105°11'44" W.; to lat. 38°05'51" N., long. 105°30'49" W.; thence to point of beginning.

Issued in Seattle, Washington, on March 2, 2001.

**Christine Mellon,**

*Acting Manager, Operations Support Group,  
Western Service Center.*

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**BILLING CODE 4910–13–P**

#### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **15 CFR Part 902**

#### **50 CFR Part 679**

[Docket No. 0912021424–1182–03]

RIN 0648–AY42

#### **Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska License 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 86 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. This action adds a Pacific cod endorsement on licenses issued under the License Limitation Program (LLP) in specific management areas if those licenses have been used on vessels that met minimum recent landing requirements using non-

trawl gear, commonly known as fixed gear. This action exempts vessels that use jig gear from the requirement to hold an LLP license, modifies the maximum length designation on a specific set of fixed gear licenses, and allows entities representing specific communities to receive a limited number of fixed-gear licenses with Pacific cod endorsements. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan, and other applicable law.

**DATES:** Effective April 21, 2011.

**ADDRESSES:** Electronic copies of Amendment 86, the Environmental Assessment (EA), Regulatory Impact Review (RIR), and the Final Regulatory Flexibility Analysis (FRFA) for this action are available from <http://www.regulations.gov> or from the Alaska Region Web site at <http://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, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; and by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@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**

The National Marine Fisheries Service (NMFS) manages the groundfish fisheries in the exclusive economic zone 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) recommended, and NMFS approved, the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management 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 for 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.

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 action 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 establishes specific criteria that must be met to allow a person to deploy 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 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. Exceptions to the LLP license requirement apply 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; or less than 60 feet LOA, using jig gear in the BSAI, and deploying no more than five jigging machines (*See* § 679.4(k)(2)).

Under the LLP, NMFS issues 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, known as the maximum length overall (MLOA); (3) designate the fishing gear that may be used on the vessel (*i.e.*, trawl or non-trawl gear designations); and (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). The endorsements for

specific regulatory areas, gear designations, and 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 other gears, or with other 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).

When the Council initially recommended the LLP, the Council intended that NMFS determine whether a vessel met a minimum number of landings to qualify the owner of that vessel to receive an LLP license with a specific gear, area, and operational type endorsement. However, the regulations that implemented the LLP used the phrase "documented harvest" instead of "landing." NMFS asserted that the phrase documented harvest was synonymous with the phrase landing, and that the phrase documented harvest provided additional clarity to the public that the phrase landing did not. NMFS' assertion that these two phrases were synonymous was subsequently challenged in court (*Trojan Partnership v. Gutierrez*, 425 F. 3d 620 (9th Cir. 2005)). The Court held that these phrases were not synonymous. In order to be consistent with Council intent when originally implementing the LLP, as well as the specific criteria recommended by the Council for this action, this action uses landings, and not documented harvests, as the basis for determining whether an LLP license holder will meet the regulatory requirements for Amendment 86.

The regulatory areas for which LLP licenses were issued include the Bering Sea (BS), Aleutian Islands (AI); Southeast Outside District (SEO); Central Gulf of Alaska (CG), which includes the West Yakutat District adjacent to the SEO; and Western Gulf of Alaska (WG). The documented harvest requirements established in the final rule implementing the LLP, for a specific area differed depending on the size of the vessel and the operational type of the vessel. The phrase "documented harvest" is used in this description of the qualifying criteria for the LLP as originally implemented to be

consistent with the terminology used in that final rule (October 1, 1998; 63 FR 52642). For example, for a vessel owner to receive an endorsement for non-trawl gear in the CG with a catcher/processor designation, a vessel must have met the minimum documented harvest requirements in the CG using non-trawl gear and the documented harvests must have been caught and processed onboard the vessel.

In 2000, 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. NMFS issued more than 300 LLP licenses endorsed for trawl gear, and more than 1,000 licenses for non-trawl gear for use in the BSAI and GOA. Non-trawl gear is commonly known as fixed gear and includes hook-and-line, pot, and jig gear. In many cases trawl and fixed gear 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 LLP licenses were also designated for both trawl and fixed gear in cases where the vessel met the documented harvests requirements using both trawl and fixed gear.

After LLP licenses were initially issued in 2000, NMFS became aware, through public testimony from fishing industry representatives and an independent review of landings data, that a substantial number of trawl and/or fixed gear endorsed LLP licenses were not being used for fishing in some, or all, of the regulatory areas for which they were endorsed. A variety of factors could result in the lack of use of an LLP license, including poor economic conditions in groundfish fisheries, choices by LLP license holders to focus on fisheries such as salmon or halibut that do not require the use of an LLP license, or other reasons specific to a license holder. 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 in the GOA and BSAI. In April 2008, after more than a year of review, development of an analysis, and extensive public comment, the Council adopted Amendment 92 to the BSAI FMP and Amendment 82 to the GOA FMP, both of which modified the LLP regarding eligibility criteria for trawl endorsements on LLP licenses. Amendments 92 and 82 removed trawl endorsements from LLP licenses that did not meet specific landing requirements during 2000 through 2006.

NMFS published a notice of availability for Amendments 92 and 82 on December 12, 2008 (73 FR 75659). A proposed rule was published on December 30, 2008 (73 FR 79773). NMFS approved Amendments 92 and 82 on March 16, 2009, and published a final rule implementing them on August 14, 2009 (74 FR 41080).

In late 2007, the Council began a similar process of reviewing the use of LLP licenses endorsed for fixed gear in the GOA. This review was initiated primarily at the request of active GOA fixed gear fishery participants who were concerned that holders of latent fixed-gear endorsed LLP licenses could resume fishing under the licenses in the future and thereby adversely affect active GOA fixed gear LLP license holders' fishing operations as well as the biological health of the fishery. Specifically, fixed-gear participants were concerned about the potential effects of additional effort in the GOA Pacific cod fishery that could increase competition and overcapacity in the fishery. Pacific cod is the primary fishery targeted by vessels using fixed gear in the GOA. In both the CG and WG regulatory areas, approximately one-fourth of the eligible LLP licenses were actively being used. The potential overcapacity from the remaining latent LLP licenses could have adverse effects on management of the fisheries. Increased fishery effort could make it more difficult for NMFS to close fisheries in a timely manner, thereby exceeding the total allowable catch (TAC) for a fishery.

During the development of this action, the Council also received input from the public requesting modification to the LLP to establish minimum landing requirements that must be met to allow a vessel to continue to participate in the Pacific cod fixed-gear fisheries in the GOA consistent with the approach adopted by the Council in 2002, under Amendment 67 to the FMP for groundfish of the BSAI (April 15, 2002; 67 FR 18129). Amendment 67

established a Pacific cod endorsement on LLP licenses that is required for vessels using hook-and-line and pot gear to participate in the directed fishery for Pacific cod in the BSAI. The term "directed fishing" is defined in regulation at § 679.2 and includes retained catch of Pacific cod that exceeds a minimum proportion of the total retained catch onboard a vessel. In April 2009, after more than a year of review and extensive public comment, the Council recommended modifications to the LLP to revise eligibility criteria for fixed gear endorsements on LLP licenses. The Council amended its final action in December 2009 to incorporate a change in the specific method used to allocate Pacific cod endorsed LLP licenses for specific persons (see the description under Action 4 of this preamble for additional detail).

**Notice of Availability and Proposed Rule**

NMFS published the notice of availability for Amendment 86 on July 2, 2010 (75 FR 38452), with a public comment period that closed on August 31, 2010. NMFS published the proposed rule for this action on July 23, 2010 (75 FR 43118), with a public comment period that closed on September 7, 2010. Amendment 86 was approved by NMFS on September 29, 2010. NMFS received two public comments from two unique persons on Amendment 86 and the proposed rule; these are summarized and responded to below. These comments did not result in any modification to the proposed rule.

**Actions Implemented by Rule**

This rule implements four different actions, all of which were components of the Council's final action.

- Action 1: Establishes a GOA Pacific cod endorsement for fixed gear LLP licenses.
- Action 2: Exempts certain vessels using jig gear in the GOA from the requirement to carry an LLP license.

- Action 3: Modifies the MLOA of certain LLP licenses.
- Action 4: Allows specific GOA community entities to request and receive LLP licenses with a Pacific cod endorsement.

The rationale and effects of these four actions are described in detail in the preamble to the proposed rule (July 23, 2010; 75 FR 43118), and are briefly summarized here. For additional detail, please see the proposed rule preamble (See ADDRESSES).

**Action 1: Establishes a Pacific Cod Endorsement for Fixed Gear LLP Licenses**

This rule assigns Pacific cod endorsements to LLP licenses that have met minimum landing requirements from January 1, 2002, through December 8, 2008, or that meet a specific exemption described below. This action preemptively reduces the potential adverse effects of overharvesting the GOA Pacific cod resource if latent LLP license holders became active in the fishery.

*Criteria for Assigning a Pacific Cod Endorsement*

This rule assigns a Pacific cod fishery endorsement to an LLP license based on landings in the directed Pacific cod fishery in the GOA from January 1, 2002, through December 8, 2008, made by vessels operating under the authority of that LLP license. NMFS will assign Pacific cod endorsements that are designated for (1) hook-and-line, pot, or jig gear; (2) specific GOA regulatory areas (i.e., CG and WG); and (3) specific operational types (i.e., catcher vessels or catcher/processors). LLP licenses with an MLOA of less than 60 feet have different landing requirements compared to LLP licenses with an MLOA equal to or greater than 60 feet. Table 1 summarizes the landing requirement criteria that must be met for each gear type, regulatory area, operational type, and MLOA of the LLP license.

TABLE 1—SUMMARY OF LANDING REQUIREMENTS FOR A FIXED GEAR PACIFIC COD ENDORSEMENT

Regulatory area	Gear type	Operational type of Pacific cod endorsement	MLOA of LLP license	Landing requirement in the Pacific cod directed fishery from January 1, 2002, through December 8, 2008
CG .....	Hook-and-line .....	Catcher vessel .....	< 60 feet .....	10 metric tons (mt).
		Catcher/Processor .....	≥ 60 feet .....	50 mt.
	Jig* .....	Catcher vessel .....	All .....	50 mt.
		Catcher/Processor .....	All .....	1 landing.
	Pot .....	Catcher vessel .....	< 60 feet .....	10 mt
			≥ 60 feet .....	50 mt.

TABLE 1—SUMMARY OF LANDING REQUIREMENTS FOR A FIXED GEAR PACIFIC COD ENDORSEMENT—Continued

Regulatory area	Gear type	Operational type of Pacific cod endorsement	MLOA of LLP license	Landing requirement in the Pacific cod directed fishery from January 1, 2002, through December 8, 2008
		Catcher/Processor .....	All .....	50 mt.
WG .....	Hook-and-line .....	Catcher vessel .....	< 60 feet .....	10 mt.
			≥ 60 feet .....	50 mt.
	Jig* .....	Catcher/Processor .....	All .....	50 mt.
		Catcher vessel .....	All .....	1 landing.
	Pot .....	Catcher/Processor .....	All .....	
		Catcher vessel .....	< 60 feet .....	10 mt.
		Catcher/Processor .....	≥ 60 feet .....	50 mt.
			All .....	50 mt.

\* LLP licenses and Pacific cod endorsements will be required only if a vessel uses more than five jigging machines, five lines, and more than 30 hooks per line.

A fixed gear LLP endorsement for Pacific cod reduces the risk that vessel operators could assign latent LLP licenses to other vessels, effectively reactivating those licenses and thereby increasing the amount of fixed gear effort in the Pacific cod fisheries. This additional effort could increase the harvest rate in the fixed-gear Pacific cod fishery as well as 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. This action effectively removes the potential for new effort in the fishery beyond currently active participants, as defined by this rule. This action provides additional control on fishing effort in the GOA Pacific cod fishery that is not provided under the current structure of the LLP.

This action does not include modifications to SEO-endorsed licenses because fishing effort in this regulatory area is currently low. The risk of additional effort in the fishery from latent fixed gear LLP license holders was deemed to be unlikely by the Council given the relatively small number of eligible LLP licenses and the TAC for Pacific cod in the SEO. This action does not include the BS or AI regulatory areas because a Pacific cod endorsement requirement has already been established for LLP licenses using fixed gear in these areas under Amendment 67 to the BSAI FMP (April 15, 2002; 67 FR 18129).

*Rationale for Landing Requirements*

The Council considered a range of options and alternatives to determine the minimum number of landings required to receive a Pacific cod endorsement. The range of years was selected by the Council based on the

first year that NMFS could definitively assign landings data to a specific LLP license (2002), and a period year that represented the last year for which NMFS had data available on recent participation in the Pacific cod fisheries (December 8, 2008). The specific date of December 8, 2008, corresponds to the date that the Council selected as a control date after which landings would not be considered for purposes of qualifying for a Pacific cod endorsement. The Council recommended a control date to ensure that fishery participants did not engage in fishing practices for the sole purpose of qualifying for a Pacific cod endorsement, and to ensure that fishery landings represent sustained participation in the directed Pacific cod fishery. The Council balanced more recent participation against considerations of economic dependence and historical fishing practices when selecting the nearly 7-year time frame from January 1, 2002, through December 8, 2008. Groundfish harvested incidentally by vessels participating in any other fishery are excluded for the purpose of determining recent participation for this action because it is not considered directed fishing for Pacific cod.

The Council recommended that only catch from vessels fishing under the Federal TAC in either the Federal or parallel fishery would be included. The Federal TAC may be harvested in Federal waters, or in State of Alaska waters under a “parallel fishery.” A parallel fishery occurs when the State of Alaska opens state waters concurrent with the Federal fishing season to allow vessels to access the Federal TAC in both state and Federal waters. The Council recommended including this catch because both of these fisheries

have participants that are subject to Federal regulation, and vessels transit between state and Federal waters when harvesting Pacific cod that is assigned to the TAC. Catch from vessels fishing in the State of Alaska’s Guideline Harvest Limit GHL Pacific cod fishery would not be included as qualifying catch to meet the requirements for a Pacific cod endorsement because this catch is not federally managed, is not subject to the TAC, and is managed exclusively by the State of Alaska.

After a review of groundfish catch history, the Council determined that different landing criteria should apply to different gear types, vessel operation types, and LLP MLOAs during the 7-year period from January 1, 2002, through December 8, 2008. The landing criteria recommended by the Council represent a minimal, but sufficient, amount of participation in the Pacific cod fishery to indicate some level of dependence on the fishery. The Council recommended that landing requirements apply to each regulatory area so that authority to fish Pacific cod could 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. The Council recommended this action to accomplish the goal of reducing the effects of potentially hundreds of new entrants into the Pacific cod fishery.

The preamble to the proposed rule, and sections 2 and 3 of the EA/RIR/FRFA prepared to support this rule contain a detailed description of the alternative landing requirements considered, and the rationale for the specific landing requirements chosen for each of the fixed gear types (*see*

ADDRESSES). That discussion is not repeated here.

Under this rule, a Pacific cod endorsement is required on all LLP licenses assigned to vessels using fixed gear to directed fish for Pacific cod in the WGOA and CGOA. Catcher vessels that use jig gear and meet specific vessel size and gear requirements will be exempt from the requirement to use an LLP license with a Pacific cod endorsement. This exemption is described in detail under Action 2. Other than the exemption described under Action 2, all vessels using fixed gear that are required to have an LLP license when fishing under the Federal TAC in either Federal or state waters are required to have a Pacific cod endorsement on the LLP license when directed fishing for Pacific cod. However, this requirement does not apply to vessels fishing in the Pacific cod GHF fishery, which is managed exclusively by the State of Alaska.

If a vessel, or vessels, to which an LLP license has been assigned meets minimum landings requirements applicable to a type of fixed gear and LLP license MLOA in a specific regulatory area during the period January 1, 2002, through December 8, 2008, then the LLP license used on that vessel, or vessels, will be assigned a

Pacific cod fixed gear endorsement for those specific gear type(s) or specific regulatory area(s). An LLP license qualifies for more than one endorsement (i.e., pot, hook-and-line, and/or jig) if it has qualified landings using more than one gear type.

In addition to issuing fixed gear endorsements based on directed harvests of Pacific cod during the January 1, 2002, through December 8, 2008, period, NMFS will issue Pacific cod endorsements to a limited number of LLP licenses that meet specific conditions even if those LLP licenses did not meet the minimum landing requirements. Specifically, NMFS will assign Pacific cod endorsements to LLP licenses that currently (1) have a catcher/processor endorsement; (2) were assigned to vessels that did not meet minimum landing requirements to qualify for a Pacific cod endorsement for catcher/processors using hook-and-line gear in either regulatory area where those LLP licenses are endorsed; and (3) were assigned to vessels that participated in industry efforts to reduce halibut prohibited species catch in the directed Pacific cod fishery in the GOA during 2006, 2007, or 2008.

This provision is intended to ensure that LLP license holders who decided not to use their vessels in the GOA

during 2006, 2007, or 2008 will receive a Pacific cod endorsement. Specifically, this provision applies to LLP licenses that did not fish in the GOA in order to minimize halibut prohibited species catch. Hook-and-line catcher/processors minimize bycatch through voluntary private contractual arrangements. NMFS has a record of all LLP licenses that were used on catcher/processor vessels participating in the voluntary private contractual arrangements from 2006 through 2008. A list of LLP licenses, based on the best available catch data, eligible for this exemption (and thus able to receive an endorsement) appears at table 2 of this preamble.

In some cases, an LLP license is eligible to receive an endorsement if it met the landing requirement in either the CG or WG, and it qualifies for the exemption in the other regulatory area if it did not otherwise meet the landing requirement in that area. Table 2 notes whether an LLP license qualifies for the exemption in an area, or qualifies under the landing requirements in an area. An LLP license is not eligible for an endorsement exemption to a regulatory area if that LLP license had not been assigned an endorsement for that area prior to this action.

TABLE 2—LLP LICENSES QUALIFYING FOR HOOK-AND-LINE CATCHER/PROCESSOR ENDORSEMENT EXEMPTION

LLP License No.	Eligible for CG endorsement exemption	Eligible for WG endorsement exemption
LLG 1400 .....	Yes .....	No (Qualifies under landing requirements).
LLG 1713 .....	Yes .....	No (Not eligible for an endorsement).
LLG 1785 .....	Yes .....	No (Qualifies under landing requirements).
LLG 1916 .....	Yes .....	No (Qualifies under landing requirements).
LLG 2112 .....	Yes .....	Yes.
LLG 2783 .....	Yes .....	No (Not eligible for an endorsement).
LLG 2892 .....	Yes .....	No (Qualifies under landing requirements).
LLG 2958 .....	Yes .....	No (Not eligible for an endorsement).
LLG 3616 .....	Yes .....	No (Not eligible for an endorsement).
LLG 3617 .....	Yes .....	No (Qualifies under landing requirements).
LLG 3676 .....	Yes .....	No (Qualifies under landing requirements).
LLG 4823 .....	Yes .....	No (Qualifies under landing requirements).
LLG 2081 .....	No (Qualifies under landing requirements) .....	Yes.
LLG 3090 .....	No (Not eligible for an endorsement) .....	Yes.

Table 2 indicates that under this exemption, NMFS will issue 12 CG and three WG endorsements. An LLP license that receives a Pacific cod hook-and-line catcher/processor endorsement under this exemption can only be assigned to a vessel participating in the Pacific cod offshore sector that is fishing in the regulatory area of the GOA for which the endorsement is received. Regulations at § 679.2 define the inshore and offshore sector for Pacific cod. Current regulations assign the offshore sector of the GOA Pacific cod fishery 10 percent of the TAC in the CG and WG.

The remaining 90 percent of the TAC will be assigned for vessels in the inshore sector.

In this rule, NMFS implements the Council's recommendation that LLP licenses receiving an endorsement under this provision "only be allowed to participate in the offshore fishery" by requiring that vessels fishing in a regulatory area for which they receive an endorsement under this exemption register and fish only in the offshore sector in that area.

The rule retains the requirement that vessel owners elect annually on their

Federal Fisheries Permit application whether to participate in the inshore or the offshore sector of the GOA. Therefore, a vessel operator who is assigned an LLP license with a Pacific cod endorsement exemption cannot participate in the inshore sector in one regulatory area and the offshore sector in another regulatory area in the GOA during the same calendar year.

This rule modifies regulations at § 679.7 to clarify that once an LLP holder operates in either the inshore or the offshore sector in the GOA, any vessel to which that LLP license is

assigned cannot participate in the sector not selected for the remainder of the calendar year. This modification ensures that LLP license holders cannot alternate activities between the inshore and offshore sector, and potentially disadvantage other fishery participants who are only able to, or only choose to, annually participate in one sector. Additional detail on the inshore and offshore sector management is provided in the preamble to the proposed rule (see **ADDRESSES**). That discussion is not repeated here.

#### *Determining Landings Assigned to an LLP License*

Starting in 2002, NMFS has required that an LLP license designate a specific vessel on which it was being used. This requirement provides NMFS the information necessary to assign landings to a specific LLP, and allows NMFS to verify the use of an LLP license on a specific vessel. When information about the use of an LLP license on a specific vessel is combined with vessel landings records, NMFS can determine how many landings may be assigned to a specific LLP license during the January 1, 2002, through December 8, 2008, qualifying period. If an LLP license is not assigned a sufficient amount or number of landings in a specific regulatory area by vessel operation type and gear type for that MLOA, then under this rule NMFS will not issue a Pacific cod endorsement for that LLP license, unless that LLP license is eligible for an exemption from landing requirements as previously described for specific hook-and-line catcher/processor endorsed LLP licenses.

If a vessel was designated on more than one LLP license at the time of a creditable landing, NMFS will assign the credit for any of the vessel's landings to all LLP licenses assigned to, or "stacked," on that vessel at that time. Therefore, NMFS may credit a single landing to more than one LLP license. Because NMFS' catch accounting system does not indicate how specific landings should be assigned to multiple LLP licenses assigned to a vessel at the time a landing was made, this provision should resolve any potential disputes that could arise about the assignment of specific landings.

In order to receive a Pacific cod endorsement for either the CG or WG, an LLP holder with a valid LLP license will have to either demonstrate that it had sufficient cumulative landings of Pacific cod for fishing years 2002 through 2008, or that it landed a sufficient total amount of fish during that period, or that the LLP license holder qualifies for such an

endorsement pursuant to the exception listed above.

#### **Action 2: Exempt Certain Vessels Using Jig Gear From the Requirement to Carry an LLP License**

The second action under this rule exempts vessels using jig gear in the GOA from the requirement to be assigned an LLP license, provided those vessels do not use more than five jiggling machines, more than one line per machine, and more than 30 hooks on any one line.

This exemption is similar to an exemption that currently applies to jig gear vessels operating in the BSAI. Regulations at § 679.4 exempt vessels less than 60 ft LOA using a maximum of five jig machines, no more than one line per jig machine, and no more than 15 hooks per line, from the requirements of the LLP in the BSAI. The restrictions on jig gear are consistent with the gear allowed in the GOA state waters Pacific cod jig fisheries. State regulations allow the use of up to 150 hooks for vessels participating in the state GHL fishery.

Jig gear operators who meet the landing threshold described under Action 1 will receive a Pacific cod endorsement for jig gear that allows a vessel using an LLP license with this endorsement to use more than five jiggling machines, more than five lines, and more than 30 hooks per line.

Additional detail on the rationale for the jig gear exemption is provided in the preamble to the proposed rule (see **ADDRESSES**). That discussion is not repeated here.

#### **Action 3: Modifies the MLOA of Certain LLP Licenses**

The third action under this rule modifies the MLOA specified on certain LLP licenses that are eligible to receive a Pacific cod endorsement under two different scenarios.

The first modification applies if (1) an LLP license has a specified MLOA greater than or equal to 60 feet; (2) that LLP license was consistently assigned to a single vessel under 60 feet LOA from January 1, 2002, through December 8, 2008; and (3) the vessel to which the LLP license was assigned met the landing thresholds applicable to LLP licenses with a specified MLOA under 60 feet. If these criteria are met, NMFS will issue a Pacific cod endorsement for the applicable gear type to the LLP license but modify the MLOA of the LLP license to match the LOA of the vessel to which the LLP license was assigned. In no case can the resulting MLOA specified on the LLP license be greater than 60 feet. This modification ensures

that vessel owners can continue to use the vessel and LLP licenses in the fisheries as they had during the January 1, 2002, through December 8, 2008, time period and the LLP licenses receive a Pacific cod endorsement applicable to the length of the vessel to which the LLP license was assigned. This modification reduces the overall MLOA specified on those LLP licenses that meet these criteria.

To determine the MLOA that will be specified on the LLP license, NMFS will use the LOA of the vessel to which the LLP license is assigned on the effective date of this rule. If the LLP holder disagrees with the LOA on file with NMFS and wishes to provide data to NMFS to establish a different LOA for the vessel, this rule requires that the LLP license holder provide a survey conducted by a naval architect or marine surveyor independent from the vessel owner or LLP license holder to verify the LOA of the vessel. A vessel owner has 90 days from the effective date of this rule to provide the survey to NMFS. NMFS will not assign a Pacific cod endorsement to an LLP license holder with a greater vessel LOA than that shown in NMFS' record unless a timely independent survey was submitted and received by NMFS. If no survey is provided within the 90-day time frame, NMFS will reissue the LLP license with the MLOA equal to the LOA of the vessel to which the LLP license was assigned based on the LOA on file with NMFS. No LLP license that receives a Pacific cod endorsement under this provision can have an MLOA greater than 60 feet under any circumstance to ensure that the intent of the Council's recommendation is met. This procedure provides an opportunity for an LLP license holder to amend NMFS' official record consistent with the appeals process described below in this preamble.

This exemption applies only if an LLP license had been continuously assigned to a vessel under 60 feet LOA during that period. The redesignation of the MLOA on an LLP license that qualifies under this provision effectively prohibits the use of that LLP license on larger vessels that may have greater harvest capacity, but allows smaller vessels that had been assigned that LLP license to continue to operate in the Pacific cod fishery.

The second modification of an LLP MLOA applies if an LLP license (1) is eligible to receive a pot catcher vessel Pacific cod endorsement, and (2) has a specified MLOA of less than 50 feet. If these criteria are met, NMFS will redesignate the MLOA of those LLP licenses to be 50 feet. This modification

ensures that a limited number of vessel owners who had recently purchased vessels that are longer than the MLOA of the LLP license that is eligible to receive the Pacific cod endorsement can continue to use those LLP licenses on their longer vessels. This recommendation is consistent with the Council's goals of providing continuing opportunities for recent fishery participants and minimizing the potential for active participants to expand effort in the GOA Pacific cod fishery.

Additional detail on the rationale for both MLOA modifications is provided in the preamble to the proposed rule (see **ADDRESSES**). That discussion is not repeated here.

#### Action 4: Allows Specific Community Entities To Request and Receive LLP Licenses With a Pacific Cod Endorsement

The fourth action under this rule allows entities representing specific communities in the WG and CG to request a limited number of non-transferable Pacific cod endorsed LLP licenses. NMFS will issue licenses that are endorsed for hook-and-line or pot gear with an MLOA of 60 feet. Once the community entity receives the LLP license, the community entity can assign that LLP license for use on a vessel designated by the entity. Prior to receiving the LLP license, the community entity eligible to receive the LLP license must submit a detailed plan describing how it will assign the LLP license to a specific vessel.

Previously, the Council recommended, and the Secretary approved, Amendment 66 to the GOA FMP, which implemented management measures to provide harvest opportunities to specific communities in the GOA (April 30, 2004; 69 FR 23681). Under Amendment 66, the Council defined a specific suite of smaller GOA communities that have historically participated in GOA fisheries but may lack some of the infrastructure and population base that could facilitate participation by residents of those communities in GOA fisheries, as compared to larger communities. Under Amendment 66, a community quota entity (CQE) was authorized to purchase halibut and sablefish quota share on behalf of the community it represents, and assign the resulting annual individual fishing quota (IFQ) to specific members of the community that meet minimum residency standards and other requirements. The CQE is intended to serve the interests of the community as a whole by providing access to fishery

resources for residents of the community.

Communities eligible under Amendment 66 (1) have a population of less than 1,500 and at least 20 persons based on the 2000 United States Census; (2) are located on the GOA coast of the North Pacific Ocean; (3) have direct saltwater access; (4) lack direct road access to communities with a population greater than 1,500 persons; (5) have historic participation in the halibut and sablefish fisheries; and (6) are listed in Table 21 to part 679. Seventeen communities that meet these criteria are located in the CG, and four communities are located in the WG.

The Council chose to rely on the six criteria listed above under Amendment 66 to determine coastal communities that may benefit from the ability to retain or expand participation opportunities in the GOA Pacific cod fishery for their residents. This rule provides the CQEs that represent these communities the opportunity to enhance their access to fishery resources by providing CQEs with a limited number of Pacific cod endorsed fixed-gear LLP licenses.

The Council recommended that if an eligible community in the CG or WG forms a CQE under existing regulations at § 679.41(l)(3), that CQE could apply to receive a specified number of Pacific cod endorsed fixed-gear LLP licenses. If a CQE submitted a complete application for LLP licenses, NMFS will issue the CQE new LLP licenses with the applicable gear and area endorsements. CQEs that have already formed and been approved by NMFS are eligible to apply to receive LLP licenses.

If new CQE communities are identified that meet the criteria established under Amendment 66, the Council could choose to recommend that those communities be included as eligible to receive a Pacific cod endorsed LLP license if those CQEs represented a community in the CG or WG. Adding new CQE communities and specifying the number of Pacific cod endorsed LLP licenses that a community could receive would need to be undertaken in future rulemaking. In December 2010, the Council recommended that three additional communities be allowed to form CQE's based on the fact that they meet the criteria established under Amendment 66. Those communities would need to be added to the CQE eligibility list in Table 21 to part 679 under separate rulemaking. Only one of the three communities, Cold Bay, is located in the WG and would be eligible to receive a non-transferable Pacific cod endorsed LLP license. Cold Bay would not be

eligible to receive an additional license until subsequent rule making is completed.

The Council clarified that a CQE can request a Pacific cod endorsed LLP license only for the area in which that community is located. CQE communities in the WG could receive only WG endorsed LLP licenses, and CQE communities in the CG could receive only CG endorsed LLP licenses.

In order to receive LLP licenses, the CQE must meet several requirements. Prior to requesting LLP licenses, the CQE must provide NMFS with a plan for soliciting and determining recipients of the LLP licenses issued to the CQE. Specifically, CQEs need to provide NMFS with (1) a statement describing the procedures that will be used to determine the distribution of LLP licenses to residents of the community represented by that CQE; (2) procedures used to solicit requests from residents to be assigned an LLP license; and (3) criteria used to determine the distribution of the use of LLP licenses among qualified community residents and the relative weighting of those criteria.

Second, once the CQE has submitted the application to NMFS and the CQE has selected a potential recipient to use the LLP license, NMFS requires that the CQE provide a letter of authorization to the vessel operator listing the specific person(s) and the specific vessel eligible to use an LLP license held by the CQE during a calendar year. An LLP license issued to a CQE cannot designate more than one vessel per calendar year. The CQE can amend the authorization letter to add additional persons authorized to use the LLP license on a vessel. The person designated to use the LLP license issued to the CQE is required to be onboard the vessel while the vessel is used to directed fish for Pacific cod or any other species authorized by that license. A copy of the authorization letter and any amendments to the authorization letter must be provided to NMFS, and a copy of that authorization letter and any amendments must be maintained onboard the vessel assigned the CQE's LLP license. Likewise, NMFS requires that the authorization letter be provided on or before the date that the LLP license is used on a vessel during a calendar year. Any amendments to the authorization to designate new authorized persons must be provided to NMFS prior to those persons using the CQE's Pacific cod LLP.

As part of this authorization letter, NMFS requires that the CQE attest that the persons authorized to use the LLP license meet residency requirements. Specifically, the CQE must attest that

the authorized person (1) is a citizen of the United States; and (2) has maintained a domicile in a CQE community in the CG or WG eligible to receive an LLP license endorsed for Pacific cod for the 12 consecutive months immediately preceding the time when the assertion of residence is made; and (3) is not claiming residency in another community, state, territory, or country, with an exception made for residents of the Village of Seldovia. Consistent with the definition of a resident under Amendment 66, residents of the Village of Seldovia shall be considered to be eligible community residents of the City of Seldovia for the purposes of eligibility to serve as an authorized vessel operator.

These requirements ensure that residents of communities receive the benefits of the LLP licenses issued to CQEs. Only one vessel can use a specific LLP license issued to a CQE per year to eliminate the potential that an LLP license could be used on multiple vessels. A CQE may not designate more than one vessel in cases of vessel loss. Because a CQE can designate a new vessel each year prior to the start of the fishing season, the effect of restricting the use of an LLP to only one vessel per year would not be expected to be a long-term constraint on fishing operations.

The CQE must provide an authorization letter assigning a specific vessel and designating the person(s) authorized use of the LLP license. The authorization letter requires that the CQE attest to individuals' residency, but does not require individuals to submit proof of residency to NMFS in order to use the LLP license issued to the CQE.

The Council identified the specific communities that would be eligible to receive LLP licenses if they formed a CQE. Those communities are listed in this final rule in Table 50 to part 679.

Several limitations apply to any LLP license that a CQE would receive. These include (1) all LLP licenses issued are non-transferable; (2) a limited number of LLP licenses can be issued to each CQE; (3) the LLP licenses have an MLOA of 60 feet; and (4) the LLP licenses have specific gear endorsements.

The number of LLP licenses that each CQE can request on behalf of a community is based on information indicating the number of LLP licenses held by residents of each eligible community and the estimated number of LLP licenses that will be extinguished under the other provisions of this action.

The number of LLP licenses that each CQE community can request is based on the Council's December 2009 action,

and that number is listed in this final rule at Table 50 to part 679.

This rule modifies regulations at § 679.7(i)(1)(i), which limit to 10 the maximum number of LLP licenses that a person may hold, to fully implement the Council's intent to allow CQEs to provide harvest opportunities for local residents. This rule amends regulations at § 679.7(i) to prohibit the CQE representing the City of Sand Point from holding more than 14 groundfish LLP licenses, rather than prohibiting the CQE representing Sand Point from holding more than 10 groundfish LLP licenses. The limit on the number of LLP licenses that a CQE may hold includes all LLP licenses that a CQE may receive under the provisions of this rule, and any LLP licenses a CQE may receive by transfer under the provisions at § 679. The provision at 679.7(i)(1)(i) is specific to Sand Point and not for all CQE's.

The LLP licenses issued will have a specified MLOA of 60 feet. The gear endorsements on LLP licenses that can be requested by a CQE generally represent the overall harvest patterns by vessels using hook-and-line and pot gear within each regulatory area. NMFS will issue LLP licenses endorsed only for pot gear to CQEs representing communities in the WG. CQEs representing communities in the CG, including Yakutat, have the option of selecting what proportion of their LLP licenses would have a pot endorsement or a hook-and-line endorsement, provided the CQE notified NMFS within six months of the effective date of this rule of their choice. Selection of gear type is a one-time permanent choice. If a CQE does not notify NMFS within this time frame, then NMFS will issue any LLP licenses that are requested by a CQE so that half the LLP licenses issued to the CQE are endorsed for pot gear and half are endorsed for hook-and-line gear. In cases where the total number of groundfish licenses issued on behalf of a community listed in Table 50 to part 679 is not even, NMFS will issue one more groundfish license with a pot gear Pacific cod endorsement than the number of groundfish licenses with a hook-and-line gear Pacific cod endorsement.

CQEs must submit annual reports consistent with the annual report requirements established under Amendment 66. CQE annual reports must be submitted to NMFS and the governing body of the community that the CQE represents. The Council requested that the CQE provide information in the annual reports describing the use of LLP licenses during a calendar year. The annual

report includes (1) the number of community residents requesting an LLP license from the CQE; (2) a description of the distribution of LLP licenses among community residents; (3) vessels assigned to use the LLP licenses; (4) the number and residency of crew employed on a vessel using the LLP license; and (5) the amount of payments made to CQEs for use of the LLP licenses, if any. These annual reports are due by January 31 for the prior fishing year for each community represented by the CQE for which those LLP licenses were granted.

NMFS did not establish an appeal process for CQEs to receive LLP licenses. NMFS is not removing or otherwise restricting existing harvest opportunities available to CQEs, so no appeal process is required. This rule allows CQEs to request LLP licenses provided the specific requirements detailed here are met. If those conditions are not met, NMFS will not issue LLP licenses to the CQEs. A potential CQE does have an opportunity to challenge and appeal the decision to certify its designation for a specific community. That provision is described in regulation at § 679.41(l)(3).

Additional detail on the issuance of Pacific cod endorsed LLP licenses to CQEs is provided in the preamble to the proposed rule (*see ADDRESSES*). That discussion is not repeated here.

#### **Process for Assigning New Pacific Cod Endorsements**

NMFS will create an official record with all relevant information necessary to assign landings to specific LLP licenses. Prior to modifying any LLP licenses, NMFS will notify all fixed gear LLP license holders of the status of their LLP license endorsements (i.e., the endorsements for specific fixed gear, operational types, and regulatory areas). Should an LLP license holder disagree with NMFS' official record, NMFS will provide an opportunity for a person to submit information to rebut the presumptions made by NMFS.

The official record created by NMFS contains vessel landings data, and the LLP licenses to which those landings are attributed. Evidence of the number and amount of landings in the Pacific cod fishery is based only on legally submitted NMFS weekly production reports for catcher/processors and state fish tickets for catcher vessels. In order to ensure that landings in the directed Pacific cod fishery are properly attributed to an LLP license, NMFS will assign any delivery of Pacific cod up to seven days after the closure of the Pacific cod season to an LLP license. The seven-day period accommodates



any final deliveries. The official record includes the records of the specific LLP licenses assigned to vessels and other relevant information necessary to attribute landings to specific LLP licenses. NMFS presumes the official record is correct, and a person wishing to challenge the presumptions in the official record bears the burden of proof through an evidentiary and appeals process. Regulations pertaining to appeals are described under § 679.43. A description of the official record and the appeals process is provided in the preamble to the proposed rule (*see ADDRESSES*). That discussion is not repeated here.

#### Public Comment

NMFS received two comments during the public comment period for Amendment 86 and the proposed rule. One comment provided a general criticism of fishery management, and was not relevant to Amendment 86 or the proposed rule. A second public comment noted that the proposed rule is consistent with the principles of Amendment 86, the needs, goals, and objectives of the GOA Pacific Cod fixed gear fishery, the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and other applicable laws. Neither comment raised issues requiring a specific response.

#### Changes From the Proposed Rule

NMFS makes two changes in the final rule to clarify specific regulatory provisions that were addressed in the preamble to the proposed rule, but that were not adequately described in the regulatory text. The first change adds a paragraph at § 679.4(k)(10)(vi)(C)(9) to note that an LLP license with a Pacific cod endorsement issued to a CQE may not be assigned to more than one vessel per calendar year. This addition is consistent with text in the preamble and the Council's motion to the proposed rule noting that "An LLP license issued to a CQE could not designate more than one vessel per calendar year" (July 23, 2010; 75 FR 43127). The preamble to the proposed rule also notes:

The Council recommended that only one vessel be allowed to use a specific LLP license issued to a CQE per year to reduce the potential that an LLP license could be used on multiple vessels. Allowing multiple vessels to use an LLP license in a given year could increase competition for Pacific cod resources in waters surrounding these communities. The Council did not recommend allowing a CQE to designate more than one vessel in cases of vessel loss. This restriction would not be expected to prevent the ability of community residents to access Pacific cod resources through a CQE LLP license because a minimum of two LLP

licenses can be issued to any one CQE. Because a CQE can designate a new vessel each year prior to the start of the fishing season, the effect of restricting the use of an LLP to only one vessel per year would not be expected to be a long-term constraint on fishing operations.

(July 23, 2010; 75 FR 43127)

The added regulatory text at § 679.4(k)(10)(vi)(C)(9) gives full effect to the clear intent expressed in the preamble to the proposed rule. This added regulatory text is consistent with, and a logical outgrowth of, the proposed rule.

The second change to the regulatory text adds text at § 679.4(k)(10)(vi)(D) to specify that a CQE's authorization letter, or any subsequent amendments to that letter, must be sent to NMFS. The added text also specifies the address where that letter must be sent. This addition is consistent with the text in the preamble to the proposed rule that notes:

NMFS would require that a copy of the authorization letter and any amendments to the authorization letter be provided to NMFS, and a copy of that authorization letter and any amendments would need to be maintained onboard the vessel assigned the CQE's LLP license. Likewise, NMFS would require that the authorization letter be provided on or before the date that the LLP license is used on a vessel during a calendar year. NMFS would also require that any amendments to the authorization to designate new authorized persons be provided to NMFS prior to those persons using the CQE's Pacific cod LLP.

(July 23; 2010, 75 FR 43127).

The regulatory text in the proposed rule at § 679.4(k)(10)(vi)(D) noted that the CQE must provide a copy of the authorization letter and any amendments to that letter to the vessel operator, but failed to specify that NMFS must also receive the authorization letter and any amendments. This final rule clarifies the regulatory text at § 679.4(k)(10)(vi)(D) to specify that that NMFS must also receive the authorization letter and any amendments. This clarification is consistent with the clear intent expressed in the preamble to the proposed rule and is consistent with, and a logical outgrowth of, the proposed rule.

#### Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is consistent with Amendment 86 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, the MSA, and other applicable laws.

#### Executive Order 12866

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

#### Regulatory Flexibility Act

A FRFA was prepared as required by section 604 of the Regulatory Flexibility Act (5 U.S.C. 604). The FRFA describes the economic impact this final rule will have on small entities. The EA/RIR/FRFA prepared for this final rule is available from NMFS (*see ADDRESSES*). The FRFA for this action explains the need for, and objectives of, the rule; notes that no public comments on the initial regulatory flexibility analysis were submitted; describes and estimates the number of small entities to which the rule will apply; describes projected reporting, recordkeeping, and other compliance requirements of the rule; and describes the steps the agency has taken to minimize the significant economic impact on small entities, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency that affect the impact on small entities was rejected. The need for and objectives of this action; a summary of the comments and responses; a description of the action, its purpose, and its legal basis; and a statement of the factual, policy, and legal reasons for selecting the alternative implemented by this action are described elsewhere in this preamble and are not repeated here.

The proposed rule was published in the **Federal Register** on July 23, 2010 (75 FR 43118). An Initial Regulatory Flexibility Analysis (IRFA) was prepared and described in the classification section of the preamble to the rule. The public comment period ended on September 7, 2010. NMFS received two comments from two individuals. None of the comments directly addressed the IRFA.

The entities directly regulated by this action are holders of LLP licenses endorsed for fixed-gear activity who conducted directed fishing for Pacific cod in the GOA. NMFS estimates that under this rule a maximum of 956 entities hold LLP licenses with fixed-gear endorsements designated for catcher vessel or catcher/processor operations may be affected by this rule; of these, an estimated 908 small entities will be directly regulated by this action.

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. NMFS is reviewing its small entity size classification for all catcher/processors in the United States. However, until new guidance is adopted, NMFS will continue to use the annual receipts standard for catcher/processors. Even if additional catcher/processors would have been identified as small entities under a revised small entity size classification, NMFS would have analyzed the effect on small entities using the same methods that were used in the IRFA prepared for the proposed rule. NMFS considered the effects of the proposed rule and attempted to reduce costs to all directly regulated entities regardless of the number of small entities.

The EA/RIR/FRFA (*see ADDRESSES*) prepared for this action analyzed projected reporting, recordkeeping, and other compliance requirements on directly regulated entities. Under this final rule, NMFS will require additional reporting, recordkeeping, and other compliance requirements. Specifically, CQEs must submit an application to receive fixed-gear LLP licenses endorsed for Pacific cod, the selection of fixed gear type by CQEs in the CG, a description of the methods used to assign any fixed gear LLP licenses received, a letter of authorization for persons using LLP licenses assigned to a CQE, and an annual report detailing the distribution and use of LLP licenses. In addition, persons who qualify to receive a fixed-gear endorsement for an LLP license that was used under specific conditions on a vessel that was less than 60 feet LOA must submit a vessel survey prior to receiving an endorsement on that LLP license if they disagree with existing LOA data held by

NMFS. Existing recordkeeping and reporting requirements for registering vessels in the inshore or offshore sector, and the LLP appeals process have not been modified.

The objective of this action is to limit the number of potential participants in Federal fixed-gear Pacific cod fisheries in the GOA by assigning and requiring Pacific cod endorsements on LLP licenses, and to provide additional fixed gear licenses that may be used on behalf of specific GOA communities. NMFS expects this action will reduce uncertainty for active participants and provide additional harvest opportunities for residents of specific communities in the Western and Central GOA and the community of Yakutat whose residents have historically participated in Central GOA fisheries.

The Council's preferred alternative for this action, as implemented by this final rule, will reduce the number of potential participants in the directed Pacific cod fishery using fixed gear. NMFS estimates that a total of 1,227 fishery endorsements may be affected under this action. These fixed gear fishery endorsements are assigned to LLP licenses held by an estimated 956 entities. As a result of this action, NMFS estimates that 376 fishery endorsements for directed fishing for Pacific cod will be issued. It is not possible to determine the precise number of the 956 entities that will continue to hold fishery endorsements for directed fishing for Pacific cod.

As noted above, all or most of the entities that are directly impacted by this regulation are small entities. This action likely will not have a significant adverse impact on some of these entities relative to the status quo alternative. The EA/RIR/FRFA (*see ADDRESSES*) prepared for this action notes that this action removes latent LLP licenses, but would not be expected to adversely affect active participants in the fixed gear directed Pacific cod fishery. On balance, these changes are not likely to have a significant economic impact on an LLP license holder.

The Council and NMFS considered and analyzed two alternative approaches for the management of Pacific cod fishing by non-trawl LLP licenses in the CG and WG in the EA/RIR/IRFA: Alternative 1, status quo/no action; and Alternative 2, the preferred alternative, add a Pacific cod endorsement on the CG and WG GOA LLP licenses if minimum landing requirements are met. Alternative 2 includes a provision to issue new Pacific cod endorsed fixed gear LLP licenses to non-profit CQEs, representing specific communities in

the CG and WG. These two alternatives examined ranges of options for a varying range of landing criteria and mechanisms for assigning Pacific cod endorsements. These alternative landing criteria and mechanisms and the options examined in the context of these alternatives constitute the suite of "significant alternatives" for this action for the purposes of the RFA.

During the development of this action, the Council considered and rejected alternatives that would have allocated quota to specific fishery participants, or allocated a portion of the TAC to specific fishery sectors and gear types. These alternatives were considered to be overly broad to address the goal of limiting the potential entry of latent effort into the Pacific cod directed fishery.

Compared with the status quo, Alternative 2, and the associated suite of elements and options comprising Alternative 2, minimizes adverse economic impacts on the directly regulated small entities. The action provides greater economic stability for fixed-gear LLP license holders with recent participation in the CG and WG Pacific cod fisheries. Alternative 2 reduces the potential for substantial increases in fishing effort from latent LLP license holders, and provides additional harvesting opportunities for CQEs who hold fixed-gear LLP licenses. In no case are these combined impacts expected to be substantial. Alternative 2 does not assign Pacific cod fishery endorsements to fixed-gear LLP licenses that have had little or no participation in Pacific cod fisheries in the CG and WG since 2002. Therefore, the effect of this action on those directly regulated entities is expected to be minimal. The effects should be minimal because the holders of latent LLP licenses are not expected to rely on the Pacific cod resource or have substantial revenue from this fishery given the lack of consistent participation in the fishery over a broad range of years. Furthermore, the addition of new Pacific cod endorsed fixed-gear licenses and the removal of LLP requirements for most vessels using jig gear may provide additional harvest opportunities for some catcher vessels in Federal waters. Many vessels currently active in state waters are catching fish assigned to the Federal TAC under the parallel fishery. It is not clear that these new Pacific cod endorsed fixed-gear licenses would substantially increase fishing effort. Although none of the alternatives are expected to have any significant economic or socioeconomic impacts, Alternative 2, the preferred alternative, minimizes the potential negative

impacts, such as less control over potential fishing effort in the GOA Pacific cod fishery and greater risk that the fishery could be subject to overharvest that could arise under Alternative 1, the status quo alternative.

NMFS has posted a small entity compliance guide on its Web site at <http://alaskafisheries.noaa.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.

Collection-of-Information

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act and which has been approved by OMB under Control Number 0648-0334. Public reporting burden per response is estimated to average four hours for an appeal of an initial administrative determination; 20 hours for a CQE to apply to receive an LLP license and select the applicable gear type of that license if that CQE is operating in the CG; 40 hours for the CQE annual report; 1 hour to submit a letter of authorization for a vessel and vessel operator from a CQE; and 1 hour to submit a vessel length survey for LLP license holders who qualify for a Pacific cod endorsement for vessels less than 60 feet LOA under specific conditions.

Estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSEES), by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to 202-395-7285. Notwithstanding any other provision of the 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 requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: March 16, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 15 CFR

Chapter IX and 50 CFR Chapter VI as follows:

TITLE 15—COMMERCE AND FOREIGN TRADE

CHAPTER IX—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 et seq.

2. In § 902.1, in the table in paragraph (b), under the entry “50 CFR”, add entries in alphanumeric order for “679.7(a)(1),” “679.7(a)(7)(vii) through (ix), 679.7(n)(1)(iv),” “679.7(a)(12), 679.7(k)(8)(i),” “679.7(a)(15),” “679.7(a)(18), 679.7(n)(3),” “679.7(a)(20),” “679.7(a)(21) and (22),” “679.7(b)(2),” “679.7(d),” “679.7(f),” “679.7(f)(8)(ii),” “679.7(i),” “679.7(k),” “679.7(l),” “679.7(n),” “679.7(n)(4)(ii),” and “679.7(o)” to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

\* \* \* \* \* (b) \* \* \*

Table with 2 columns: CFR part or section where the information collection requirement is located, and Current OMB control number (all numbers begin with 0648-). Rows include 50 CFR 679.7(a)(1) through 679.7(o) with corresponding OMB control numbers like -0206, -0334, etc.

**TITLE 50—WILDLIFE AND FISHERIES**  
**CHAPTER VI—FISHERY CONSERVATION**  
**AND MANAGEMENT, NATIONAL OCEANIC**  
**AND ATMOSPHERIC ADMINISTRATION,**  
**DEPARTMENT OF COMMERCE**

**PART 679—FISHERIES OF THE**  
**EXCLUSIVE ECONOMIC ZONE OFF**  
**ALASKA**

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

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

■ 4. In § 679.4,

■ a. Redesignate paragraphs (k)(2)(iii) and (k)(2)(iv) as paragraphs (k)(2)(iv) and (k)(2)(v); and paragraphs (k)(10) through (k)(12) as paragraphs (k)(11) through (k)(13);

■ b. Revise paragraph (k)(3)(i), and paragraph (k)(9) heading;

■ c. Add paragraphs (k)(2)(iii) and (k)(10).

The additions and revisions read as follows:

**§ 679.4 Permits.**

\* \* \* \* \*

(k) \* \* \*

(2) \* \* \*

(iii) A vessel may use a maximum of five jig machines, one line per jig machine, and a maximum of 30 hooks per line, to conduct directed fishing for license limitation groundfish in the GOA without a groundfish license;

\* \* \* \* \*

(3) \* \* \*

(i) *Vessel MLOA—(A) General.* A license may be used only on a vessel named on the license, a vessel that

complies with the vessel designation and gear designation specified on the license, and a vessel that has an LOA less than or equal to the MLOA specified on the license;

(B) *Modification of license MLOA for groundfish licenses with a Pacific cod endorsement in the GOA.* (1) A groundfish license with a specified MLOA less than or equal to 50 feet prior to April 21, 2011 that subsequently receives a Pacific cod endorsement in the GOA with a catcher vessel and pot gear designation as specified under paragraph (k)(10) of this section will be redesignated with an MLOA of 50 feet on the date that the Pacific cod endorsement is assigned to that groundfish license;

(2) A groundfish license with a specified MLOA greater than or equal to 60 feet:

(i) That was continuously assigned to a single vessel less than 60 feet LOA from January 1, 2002, through December 8, 2008; and

(ii) That met the landing thresholds applicable for a groundfish license with a specified MLOA of less than 60 feet for the specific gear designation(s) and regulatory area(s) applicable to that groundfish license as described in paragraph (k)(10) of this section, will be redesignated with an MLOA equal to the LOA of the vessel to which that groundfish license was assigned from January 1, 2002, through December 8, 2008, based on the LOA for that vessel in NMFS' non-trawl gear recent participation official record on April 21, 2011, or as specified by a marine survey conducted by an independent certified

marine surveyor or naval architect provided that the license holder provides NMFS with a marine survey conducted by an independent certified marine surveyor or naval architect not later than 90 days after April 21, 2011 that specifies the LOA of the vessel to which that groundfish license was assigned.

(3) The MLOA specified on a groundfish license under paragraph (k)(3)(i)(B)(2) of this section may not exceed 60 feet.

\* \* \* \* \*

(9) *Pacific cod endorsements in the BSAI.* \* \* \*

(10) *Pacific cod endorsements in the Western and Central GOA—(i) General.* In addition to other requirements of this part, and unless specifically exempted in paragraph (k)(10)(iv) of this section, a license holder must have a Pacific cod endorsement on his or her groundfish license to conduct directed fishing for Pacific cod in the Western Gulf of Alaska or Central Gulf of Alaska with hook-and-line gear, pot gear, or jig gear on a vessel using more than five jig machines, more than one line per machine, and more than 30 hooks per line. A license holder can only use the specific non-trawl gear(s) indicated on his or her license to conduct directed fishing for Pacific cod in the Western Gulf of Alaska or Central Gulf of Alaska.

(ii) *Eligibility requirements for a Pacific cod endorsement.* This table provides eligibility requirements for Pacific cod endorsements on an LLP groundfish license:

If a license holder's license has a * * *	And that license has an MLOA of * * *	And the license holder harvested Pacific cod with * * *	Then the license holder must demonstrate that he or she * * *	From January 1, 2002, through December 8, 2008, in * * *	To receive a Pacific cod endorsement that authorizes harvest in the directed Pacific cod fishery with * * *
(A) Catcher vessel designation.	< 60 feet .....	hook-and-line gear.	legally landed at least 10 mt of Pacific cod in the directed Pacific cod fishery.	the Central Gulf of Alaska.	hook-and-line gear in the Central Gulf of Alaska.
(B) Catcher vessel designation.	≥ 60 feet .....	hook-and-line gear.	legally landed at least 50 mt of Pacific cod in the directed Pacific cod fishery.	the Central Gulf of Alaska.	hook-and-line gear in the Central Gulf of Alaska.
(C) Catcher vessel designation.	< 60 feet .....	hook-and-line gear.	legally landed at least 10 mt of Pacific cod in the directed Pacific cod fishery.	the Western Gulf of Alaska.	hook-and-line gear in the Western Gulf of Alaska.
(D) Catcher vessel designation.	≥ 60 feet .....	hook-and-line gear.	legally landed at least 50 mt of Pacific cod in the directed Pacific cod fishery.	the Western Gulf of Alaska.	hook-and-line gear in the Western Gulf of Alaska.
(E) Catcher vessel designation.	< 60 feet .....	pot gear .....	legally landed at least 10 mt of Pacific cod in the directed Pacific cod fishery.	the Central Gulf of Alaska.	pot gear in the Central Gulf of Alaska.
(F) Catcher vessel designation.	≥ 60 feet .....	pot gear .....	legally landed at least 50 mt of Pacific cod in the directed Pacific cod fishery.	the Central Gulf of Alaska.	pot gear in the Central Gulf of Alaska.
(G) Catcher vessel designation.	< 60 feet .....	pot gear .....	legally landed at least 10 mt of Pacific cod in the directed Pacific cod fishery.	the Western Gulf of Alaska.	pot gear in the Western Gulf of Alaska.

If a license holder's license has a * * *	And that license has an MLOA of * * *	And the license holder harvested Pacific cod with * * *	Then the license holder must demonstrate that he or she * * *	From January 1, 2002, through December 8, 2008, in * * *	To receive a Pacific cod endorsement that authorizes harvest in the directed Pacific cod fishery with * * *
(H) Catcher vessel designation.	≥ 60 feet .....	pot gear .....	legally landed at least 50 mt of Pacific cod in the directed Pacific cod fishery.	the Western Gulf of Alaska.	pot gear in the Western Gulf of Alaska.
(I) Catcher vessel designation.	any .....	jig gear .....	at least one legal landing of Pacific cod in the directed Pacific cod fishery.	the Central Gulf of Alaska.	jig gear in the Central Gulf of Alaska.
(J) Catcher vessel designation.	any .....	jig gear .....	at least one legal landing of Pacific cod in the directed Pacific cod fishery.	the Western Gulf of Alaska.	jig gear in the Western Gulf of Alaska.
(K) Catcher/Processor vessel designation.	any .....	hook-and-line gear.	legally landed at least 50 mt of Pacific cod in the directed Pacific cod fishery.	the Central Gulf of Alaska.	hook-and-line gear in the Central Gulf of Alaska.
(L) Catcher/Processor vessel designation.	any .....	hook-and-line gear.	legally landed at least 50 mt of Pacific cod in the directed Pacific cod fishery.	the Western Gulf of Alaska.	hook-and-line gear in the Western Gulf of Alaska.
(M) Catcher/Processor vessel designation.	any .....	pot gear .....	legally landed at least 50 mt of Pacific cod in the directed Pacific cod fishery.	the Central Gulf of Alaska.	pot gear in the Central Gulf of Alaska.
(N) Catcher/Processor vessel designation.	any .....	pot gear .....	legally landed at least 50 mt of Pacific cod in the directed Pacific cod fishery.	the Central Gulf of Alaska.	pot gear in the Central Gulf of Alaska.
(O) Catcher/Processor vessel designation.	any .....	jig gear .....	at least one legal landing in the directed Pacific cod fishery.	the Central Gulf of Alaska.	jig gear in the Central Gulf of Alaska.
(P) Catcher/Processor vessel designation.	any .....	jig gear .....	at least one legal landing in the directed Pacific cod fishery.	the Western Gulf of Alaska.	jig gear in the Western Gulf of Alaska.

(iii) *Explanations for Pacific cod endorsements.* (A) All eligibility amounts in the table at paragraph (k)(10)(ii) of this section will be determined based on round weight equivalents.

(B) NMFS shall assign a legal landing to a groundfish license in an area based only on information contained in the official record described in paragraph (k)(10)(v) of this section.

(C) Notwithstanding the eligibility amount in the table at paragraph (k)(10)(ii) of this section, NMFS shall assign a non-trawl Pacific cod endorsement with a catcher/processor and a hook-and-line gear designation in the regulatory areas specified to those groundfish licenses listed in Table 49 to part 679;

(D) If a groundfish license meets the criteria described in paragraph (k)(3)(i)(B)(2) of this section and NMFS has redesignated the MLOA of that groundfish license based on those criteria, then NMFS may assign a non-trawl Pacific cod endorsement with the specific gear designation(s) and regulatory area(s) applicable to the redesignated MLOA of that groundfish license based on the eligibility criteria established in paragraph (k)(10)(ii) of this section; and

(E) NMFS may issue groundfish licenses with non-trawl Pacific cod endorsements to CQEs as specified in paragraph (k)(10)(vi) of this section.

(iv) *Exemptions to Pacific cod endorsements.* Any vessel exempted from the License Limitation Program at paragraph (k)(2) of this section.

(v) *Non-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 and amount of legal landings assigned to a groundfish license for purposes of the non-trawl gear designation participation requirements described in paragraph (k)(10)(ii) of this section;

(2) All other relevant information necessary to administer the requirements described in paragraphs (k)(3)(i)(B) and (k)(10) of this section.

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

(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) If more than one groundfish license holder is claiming the same legal landing because their groundfish license designated the vessel at the time that the legal landing was made, then each groundfish license for which the legal landing is being claimed will be credited with the legal landing.

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

(F) The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 30-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the person fails to support the person's claims and is insufficient to rebut the presumption that the official record is correct, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 30-day evidentiary period. The IAD will indicate the deficiencies with the information, or with 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.

(vi) *Issuance of non-trawl groundfish licenses to CQEs.* (A) Each CQE that has been approved by the Regional Administrator under the requirements of § 679.41(l)(3) to represent a community listed in Table 50 to part 679 may apply to receive groundfish licenses on behalf of the communities listed in Table 50 to part 679 that CQE is designated to represent. In order to receive a groundfish license, a CQE must submit a complete application for a groundfish license to the Regional Administrator, NMFS, P.O. Box 21668, Juneau, AK 99802. A CQE may not apply for, and may not receive, more than the maximum amount of groundfish licenses designated in the regulatory area specified for a community listed in Table 50 to part 679.

(B) The application for a CQE to receive a groundfish license must include:

(1) Name of contact person(s) for the CQE, NMFS person number, permanent business mailing addresses, business phone, business e-mail, and business fax;

(2) A statement describing the procedures that will be used to determine the distribution of LLP licenses to residents of the community represented by that CQE;

(3) Procedures used to solicit requests from residents to be assigned an LLP license;

(4) Criteria used to determine the distribution of the use of LLP licenses among qualified community residents and the relative weighting of those criteria; and

(5) The gear designation of groundfish license for which the CQE is applying provided that the community for which the CQE is applying is eligible to receive a groundfish license designated for the Central Gulf of Alaska and the application to receive a groundfish license has been received by NMFS not later than six months after April 21, 2011.

(C) A groundfish license approved for issuance to a CQE by the Regional Administrator for a community listed in Table 50 to part 679:

(1) May not be transferred to any person from the CQE;

(2) Will have only the regional designation specified for that

community as listed in Table 50 to part 679;

(3) Will have an MLOA of 60 feet specified on the license;

(4) Will have only a catcher vessel designation;

(5) Will receive only a non-trawl gear endorsement;

(6) Will be assigned a Pacific cod endorsement with a non-trawl gear designation as specified in paragraph (k)(10)(vi)(D) of this section.

(7) May not be assigned to any vessel other than the vessel specified for that groundfish license in the annual CQE authorization letter;

(8) May not be assigned for use by any person(s) other than the person(s) specified for that groundfish license in the annual CQE authorization letter, or any subsequent amendment to that authorization letter that is made by the CQE provided that NMFS receives that amendment prior to that person using that groundfish license aboard a vessel; and

(9) May not be assigned to more than one vessel per calendar year.

(D) The CQE must provide a copy of the annual CQE authorization letter, and any subsequent amendment to that authorization letter that is made by the CQE to NMFS and the vessel operator prior to the person(s) designated in the authorization letter using that groundfish license aboard a vessel. The vessel operator must maintain a copy of the annual CQE authorization letter, and any subsequent amendment to that authorization letter that is made by the CQE onboard the vessel when that vessel is directed fishing for Pacific cod under the authority of that groundfish license. The authorization letter, and any subsequent amendment to that authorization letter must be sent to the Regional Administrator, NMFS, P.O. Box 21668, Juneau, AK 99802.

(E) The CQE must attest in the annual CQE authorization letter, or any subsequent amendment to that authorization letter, that the person(s) using a groundfish license issued to a CQE:

(1) Is a citizen of the United States;

(2) Has maintained a domicile in a CQE community in the Central GOA or Western GOA eligible to receive an LLP license endorsed for Pacific cod for the 12 consecutive months immediately preceding the time when the assertion of residence is made; and

(3) Is not claiming residency in another community, state, territory, or country, except that residents of the Village of Seldovia shall be considered to be eligible community residents of the City of Seldovia for the purposes of

eligibility to serve as an authorized person.

(F) Non-trawl Pacific cod gear endorsements on groundfish licenses approved for issuance to CQEs by the Regional Administrator shall have the following gear designations:

(1) NMFS will issue only pot gear Pacific cod endorsements for groundfish licenses with a Western Gulf of Alaska designation to CQEs on behalf of a community listed in Table 50 to part 679.

(2) NMFS will issue either a pot gear or a hook-and-line gear Pacific cod endorsement for a groundfish license with a Central Gulf of Alaska designation to CQEs on behalf of a community listed in Table 50 to part 679 based on the application for a groundfish license as described in paragraph (k)(10)(vi)(B) of this section provided that application is received by NMFS not later than six months after April 21, 2011. If an application to receive a groundfish license with a Central Gulf of Alaska designation on behalf of a community listed in Table 50 to part 679 is received later than six months after April 21, 2011, NMFS will issue an equal number of pot gear and hook-and-line gear Pacific cod endorsements for a groundfish license issued to the CQE on behalf of a community listed in Table 50 to part 679. In cases where the total number of groundfish licenses issued on behalf of a community listed in Table 50 to part 679 is not even, NMFS will issue one more groundfish license with a pot gear Pacific cod endorsement than the number of groundfish licenses with a hook-and-line gear Pacific cod endorsement.

(G) By January 31, the CQE shall submit a complete annual report on use of groundfish licenses issued to the CQE for the prior fishing year for each community represented by the CQE to the Regional Administrator, NMFS, P.O. Box 21668, Juneau, AK 99802, and to the governing body of each community represented by the CQE as identified in Table 21 to this part. A complete annual report contains the following information:

(1) The number of community residents requesting a groundfish license;

(2) A description of the distribution of groundfish licenses among community residents;

(3) Vessels assigned to use the groundfish licenses;

(4) The number and residency of crew employed on a vessel using the LLP license; and

(5) Any payments made to CQEs for use of the LLP licenses. Consistent with

the timeline required for submission of the CQE annual report for the use of halibut and sablefish IFQ, these annual reports are due by January 31 for the prior fishing year for each community represented by the CQE.

\* \* \* \* \*

- 5. In § 679.7,
- A. Paragraphs (a)(7)(vii) through (a)(7)(ix) are added;
- B. Paragraph (i)(1)(i) is revised;
- C. Paragraph (i)(1)(v) is added; and
- D. Paragraph (i)(10) is added

The additions and revisions read as follows:

**§ 679.7 Prohibitions.**

\* \* \* \* \*

- (a) \* \* \*
- (7) \* \* \*

(vii) Operate a vessel in the “inshore component of the GOA” as defined in § 679.2 during a calendar year if that vessel is used to directed fish for Pacific cod under the authority of a groundfish license with a Pacific cod endorsement in the regulatory area listed in Table 49 to part 679.

(viii) Use a vessel operating under the authority of a groundfish license with a Pacific cod endorsement to directed fish for Pacific cod in the GOA apportioned to the inshore component of the GOA as

specified under § 679.20(a)(6) if that vessel has directed fished for Pacific cod in the GOA apportioned to the offshore component of the GOA during that calendar year.

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

\* \* \* \* \*

- (i) \* \* \*
- (1) \* \* \*

(i) Hold more than 10 groundfish licenses in the name of that person at any time, except as provided in paragraphs (i)(1)(iii) and (i)(1)(v) of this section;

\* \* \* \* \*

(v) The CQE representing the City of Sand Point may not hold more than 14 groundfish licenses.

\* \* \* \* \*

(10) Operate a vessel under the authority of an LLP license issued to a CQE to directed fish for Pacific cod in the GOA if the person specified for that groundfish license in the annual CQE

authorization letter, or any subsequent amendment to that authorization letter, is not onboard the vessel.

\* \* \* \* \*

■ 6. Tables 49 and 50 to Part 679 are added to read as follows:

**TABLE 49 TO PART 679—GROUNDFISH LICENSES QUALIFYING FOR HOOK-AND-LINE CATCHER/PROCESSOR ENDORSEMENT EXEMPTION**

Groundfish license * * *	Shall receive a Pacific cod endorsement with a catcher/processor and a hook-and-line designation in the following regulatory area(s) * * *
LLG 1400 .....	Central Gulf of Alaska.
LLG 1713 .....	Central Gulf of Alaska.
LLG 1785 .....	Central Gulf of Alaska.
LLG 1916 .....	Central Gulf of Alaska.
LLG 2112 .....	Central Gulf of Alaska and Western Gulf of Alaska.
LLG 2783 .....	Central Gulf of Alaska.
LLG 2892 .....	Central Gulf of Alaska.
LLG 2958 .....	Central Gulf of Alaska.
LLG 3616 .....	Central Gulf of Alaska.
LLG 3617 .....	Central Gulf of Alaska.
LLG 3676 .....	Central Gulf of Alaska.
LLG 4823 .....	Central Gulf of Alaska.
LLG 2081 .....	Western Gulf of Alaska.
LLG 3090 .....	Western Gulf of Alaska.

**TABLE 50 TO PART 679—MAXIMUM NUMBER OF GROUNDFISH LICENSES AND THE REGULATORY AREA SPECIFICATION OF GROUNDFISH LICENSES THAT MAY BE GRANTED TO CQES REPRESENTING SPECIFIC GOA COMMUNITIES**

Central GOA Pacific cod endorsed non-trawl groundfish license		Western GOA Pacific cod endorsed non-trawl groundfish license	
Community	Maximum number of groundfish licenses that may be granted	Community	Maximum number of groundfish licenses that may be granted
Akhiok .....	2	Ivanof Bay .....	2
Chenega Bay .....	2	King Cove .....	9
Chignik .....	3	Perryville .....	2
Chignik Lagoon .....	4	Sand Point .....	14
Chignik Lake .....	2		
Halibut Cove .....	2		
Karluk .....	2		
Larsen Bay .....	2		
Nanwalek .....	2		
Old Harbor .....	5		
Ouzinkie .....	9		
Port Graham .....	2		
Port Lions .....	6		
Seldovia .....	8		
Tyonek .....	2		
Tatitlek .....	2		
Yakutat .....	3		

**SECURITIES AND EXCHANGE  
COMMISSION****17 CFR Part 230****General Rules and Regulations,  
Securities Act of 1933***CFR Correction*

In Title 17 of the Code of Federal Regulations, Parts 200 to 239, revised as of April 1, 2010, on page 686, in § 230.501, following paragraph (e)(3), reinstate the Note to paragraph (e) to read as follows:

**§ 230.501 Definitions and terms used in Regulation D.**

\* \* \* \* \*

(e) \* \* \*

**NOTE:** The issuer must satisfy all the other provisions of Regulation D for all purchasers whether or not they are included in calculating the number of purchasers. Clients of an investment adviser or customers of a broker or dealer shall be considered the “purchasers” under Regulation D regardless of the amount of discretion given to the investment adviser or broker or dealer to act on behalf of the client or customer.

\* \* \* \* \*

[FR Doc. 2011–6830 Filed 3–21–11; 8:45 am]

BILLING CODE 1505–01–D

**DEPARTMENT OF HOMELAND  
SECURITY****Bureau of Customs and Border  
Protection****DEPARTMENT OF THE TREASURY****19 CFR Part 141****Entry of Merchandise***CFR Correction*

In Title 19 of the Code of Federal Regulations, Parts 141 to 199, revised as of April 1, 2010, on page 6, the second general authority citation for part 141 is removed.

[FR Doc. 2011–6840 Filed 3–21–11; 8:45 am]

BILLING CODE 1505–01–D

**DEPARTMENT OF HEALTH AND  
HUMAN SERVICES****Food and Drug Administration****21 CFR Part 179**[Docket No. FDA–1999–F–0056; Formerly  
Docket No. 1999F–4372]**Irradiation in the Production,  
Processing, and Handling of Food;  
Confirmation of Effective Date****AGENCY:** Food and Drug Administration, HHS.**ACTION:** Final rule; denial of requests for a stay of effective date and for a hearing; response to objections; confirmation of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is denying requests for a hearing on the final rule that amended the food additive regulations to provide for the safe use of ionizing radiation for the control of *Vibrio* species and other foodborne pathogens in fresh or frozen molluscan shellfish. After reviewing objections to the final rule and requests for a hearing, FDA has concluded that the objections do not justify a hearing or otherwise provide a basis for revoking the regulation. FDA also is denying the request for a stay of the effective date of the amendment to the food additive regulations.

**DATES:** The August 16, 2005, effective date for the final rule published at 70 FR 48057 is confirmed.**FOR FURTHER INFORMATION CONTACT:** Lane A. Highbarger, Center for Food Safety and Applied Nutrition (HFS–255), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1204.**SUPPLEMENTARY INFORMATION:****Table of Contents**

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- IV. Analysis of Objections and Response to Hearing Requests
  - A. Studies on Animals Fed Clams
  - B. Microbiological Safety of Molluscan Shellfish
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  - K. Chemicals Formed in Irradiated Foods
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## VI. References

**I. Introduction**

FDA published a notice in the **Federal Register** of October 19, 1999 (64 FR 56351), announcing the filing of a food additive petition (FAP 9M4682) by the National Fisheries Institute and the Louisiana Department of Agriculture and Forestry. In the **Federal Register** of August 16, 2005 (70 FR 48057), FDA issued a final rule permitting the irradiation of fresh or frozen molluscan shellfish for the control of *Vibrio* spp. and other food-borne pathogens. FDA based its decision on data in the petition and in its files. In the preamble to the final rule, FDA outlined the basis for its decision and responded to questions raised in several comments from Public Citizen and the Center for Food Safety (PC/CFS). The preamble to the final rule advised that objections to the final rule and requests for a hearing were due within 30 days of the publication date (*i.e.*, by September 15, 2005).

**II. Objections, Requests for a Hearing,  
and Requests for a Stay**

Section 409(f)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 348(f)(1)) provides that, within 30 days after publication of an order relating to a food additive regulation, any person adversely affected by such order may file objections, specifying with particularity the provisions of the order “deemed objectionable, stating reasonable grounds therefore, and requesting a public hearing upon such objections.”

Under part 171 (21 CFR part 171) in § 171.110 of the food additive regulations, objections and requests for a hearing are governed by part 12 (21 CFR part 12) of FDA’s regulations. Under § 12.22(a), each objection must meet the following conditions: (1) must be submitted on or before the 30th day after the date of publication of the final rule; (2) must be separately numbered; (3) must specify with particularity the provision of the regulation or proposed order objected to; (4) must specifically state each objection on which a hearing is requested; failure to request a hearing on an objection constitutes a waiver of the right to a hearing on that objection; and (5) must include a detailed description and analysis of the factual information to be presented in support of the objection if a hearing is requested; failure to include a description and analysis for an objection constitutes a waiver of the right to a hearing on that objection.

Following publication of the final rule permitting the irradiation of fresh or frozen molluscan shellfish for the