must consult with us under section 7 of the Act if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the Alabama sturgeon. Based on that analysis, only small business entities that rely on water management, water quality, dredging, or construction were identified as entities that could be affected by the incremental impacts from the proposed rule. Impacts described in Appendix A of the DEA are predominantly associated with pulp mills, wood pellet manufacturing, residential, commercial, or industrial development activities, construction activities, and dredging activities in areas proposed for final critical habitat for the Alabama sturgeon. These impacts would be expected to be borne by small businesses that rely on water management, water quality, dredging, or construction. The average cost to this type of small business over the next twenty years is estimated to range from $604 to $5,570, discounted at 7 percent. Please refer to our Draft Economic Analysis of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. We have identified small entities that may be impacted by the proposed critical habitat designation. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Authors

The primary authors of this notice are the Alabama Field Office and Southeast Regional Office, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 73 FR 30361, May 27, 2008, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Critical habitat for Alabama sturgeon (*Scaphirhyncus suttkusi*) in § 17.95(e), which was proposed to be added on May 27, 2008, at 73 FR 30373, is proposed to be amended by revising paragraph (2)(i) as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) Fishes

* * * * *

Alabama sturgeon (*Scaphirhynchus suttkusi*)

* * * * *

(2) * * *

(i) A flow regime (*i.e.*, the magnitude, frequency, duration, seasonality of discharge over time) necessary to maintain all life stages of the species in the riverine environment, including migration, breeding site selection, resting, larval development, and protection of cool water refuges (*i.e.*, tributaries).

* * * * *

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: December 18, 2008.

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–30750 Filed 12–29–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0808011016–81595–02]

RIN 0648–AX14

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands and Gulf of Alaska License Limitation Program

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

ACTION: Proposed rule; request for comments.

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

DATES: Comments must be received no later than February 13, 2009.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by ''0648–AX14'', by any one of the following methods:

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

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

NMFS will accept anonymous comments (enter N/A in required fields if you wish to remain anonymous). Attachments to electronic comments

will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS at the above address, and by email to *David_Rostker@omb.eop.gov* or fax to 202–395–7285.

Copies of Amendments 92 and 82, the Environmental Assessment (EA), Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA) for this action are available from the NMFS Alaska Region at the address above or from the Alaska Region website at *http://www.alaskafisheries.noaa.gov*.

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

SUPPLEMENTARY INFORMATION:

Background on the License Limitation Program

NMFS manages the groundfish fisheries in the exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands Management Area (BSAI) and the Gulf of Alaska (GOA) under the Fishery Management Plan (FMPs) for groundfish in the respective areas. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). Regulations implementing the FMPS appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

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

The LLP for groundfish fisheries was recommended by the Council as Amendments 39 and 41 to the BSAI and GOA groundfish FMPs, respectively. The Council adopted the LLP for groundfish in June 1995, and NMFS approved Amendments 39 and 41 on September 12, 1997. NMFS published a final rule to implement the LLP on October 1, 1998 (63 FR 52642); and LLP licenses were required for federal groundfish fisheries beginning on January 1, 2000. The preamble to the final rule implementing the groundfish LLP and the EA/RIR/IRFA prepared for this proposed 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 established specific criteria that must be met to allow a person to use a vessel to directed fish in most federally managed groundfish fisheries. An LLP license must be assigned to each vessel that is used to participate in directed fishing for most federally managed groundfish species. The term directed fishing and the specific groundfish species for which an LLP license is required are defined in regulations at§ 679.2. An exception to the requirement that an LLP license must be assigned to a vessel applies if the vessel is: less than 26 feet length overall (LOA) in the GOA; less than 32 feet LOA and fishing in the BSAI; or using jig gear in the BSAI if the vessel is less than 60 feet LOA and deploys no more than five jigging machines.

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

To be consistent with Council intent when originally implementing the LLP, as well as the specific criteria recommended by the Council for this proposed action, this action proposes to use landings, and not documented harvest as the basis for determining whether an LLP license holder will meet the proposed regulatory requirements.

The regulatory areas for which LLP licenses were issued included the Bering Sea (BS), Aleutian Islands (AI), Southeast Outside District (SEO), Central Gulf of Alaska (CG), or Western Gulf of Alaska (WG). The documented harvest requirements necessary to receive an LLP license endorsed for a specific area differed depending on the size of the vessel and the operational type of the vessel. As an example, for a vessel owner to receive an endorsement for trawl gear in the CG with a catcher/processor designation, a vessel must have met the minimum documented harvest requirements in the CG using trawl gear and must have caught and processed those documented harvests onboard the vessel. NMFS did not issue any LLP licenses with a trawl endorsement in SEO because trawl gear is prohibited in SEO. Therefore, this proposed action would not apply to the SEO management area. 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 over 300 LLP licenses endorsed for trawl gear for use in the BSAI and GOA. In many cases trawl LLP licenses were endorsed for multiple regulatory areas (e.g., WG, CG, and BS) if a vessel met the minimum number of documented harvests in more than one area. Additionally, a number of trawl LLP licenses were also designated for both trawl and non-trawl gear (i.e., hook-and-line, pot, or jig gear) in cases where the vessel met the documented harvests requirements using both trawl and non-trawl gear.

After LLP licenses were initially issued in 2000, NMFS became aware from public testimony and a review of landings data that a substantial number of trawl endorsed LLP licenses were not being used for fishing in some, or all, of the regulatory areas for which they were endorsed. Changes in the economic viability of some fishing operations, changes in fishery management regulations, or consolidation of fishery operations are likely factors affecting the number of LLP licenses that were actively used by vessels. LLP licenses that are valid but are not currently being used on a vessel are commonly known as ''latent'' LLP licenses.

Beginning in early 2007, the Council began reviewing the use of trawl-endorsed LLP licenses. This review was initiated primarily at the request of active trawl fishery participants who were concerned that latent trawl-endorsed LLP licenses could become active in the future and adversely affect their fishing operations. Additional effort by trawl vessels could increase competition, result in overcapacity in the fishery, and potentially make management of the fisheries more difficult if effort in the fishery made it more difficult for NMFS to close fisheries in a timely manner, thereby exceeding the TAC for a fishery. During the process of this review, the Council also received input from the public requesting modification to the LLP to meet unique conditions in the AI area that limit the ability of catcher vessels to harvest, and specific AI area communities to process, federally managed groundfish. In April 2008, after more than a year of review and extensive public comment, the Council recommended modifications to the LLP to revise eligibility criteria for trawl endorsements on LLP licenses.

Proposed Action

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

One exemption would allow a person to maintain a trawl endorsement on an LLP license for both the CG and the WG provided that the LLP license had been used on a vessel that made at least 20 landings using trawl gear in either the CG or WG from 2005 through 2007. The second exemption would allow retention of a trawl endorsement in a specific regulatory area if that area endorsement is required for continued participation in one of three LAPPs: the American Fisheries Act (AFA); the Amendment 80 Program; or the CG Rockfish. Under this exemption, NMFS would not remove trawl endorsements in the BS or AI regulatory areas from LLP licenses that are assigned for use in the AFA or Amendment 80 LAPP, and NMFS would not remove trawl endorsements in the CG regulatory area from LLP licenses assigned for use in the CG Rockfish Program LAPP.

Only LLP licenses used in fisheries managed under these three LAPPs would be affected by this exemption, because fisheries managed under other LAPPs in the North Pacific (e.g., BSAI crab and BSAI halibut and sablefish) may not be fished by vessels using trawl gear; therefore this action would not affect those fisheries.

The second action under this proposed rule would issue new trawl AI area endorsements for catcher vessel operations for use in the Aleutian Islands Subarea. Under this proposed action, NMFS would issue AI trawl endorsements to (1) non-AFA catcher vessels less than 60 feet in LOA, if those vessels have made at least 500 metric tons (mt) of landings of Pacific cod in State of Alaska (State) waters adjacent to the Aleutian Islands Subarea during 2000 through 2006; and (2) non-AFA catcher vessels equal to or greater than 60 feet LOA if those vessels have made at least one landing in State waters during the Federal groundfish season in the Aleutian Islands Subarea and have made at least 1,000 mt of Pacific cod landings in the BSAI during 2000 through 2006. The rationale and effects of these two proposed actions are described in detail in the following sections.

Action 1: Removing Latent Trawl LLP Licenses

Use of Trawl LLP Endorsements

Latent LLP licenses are inactive, but not invalid. Since the issuance of LLP licenses in 2000, substantially fewer LLP licenses endorsed for trawl fisheries have been used onboard vessels than were originally issued. The EA/RIR/IRFA prepared for this proposed action describes in detail the reasons that a substantial proportion of trawl endorsed LLP licenses have been latent since their issuance (see **ADDRESSES**). Factors leading to more limited participation in trawl fisheries, and latent LLP licenses, include the changes in fishery management programs over the past decade that established several LAPPs, changes in fishing capacity relative to the total allowable catch, and regulations implemented to protect Steller sea lions (Eumetopias jubatus). Possible incentives for latent LLP license holders to re-enter the fisheries include shorter fishing seasons and diminished opportunities in other fisheries. As reflected in Section 2.2.2.1 of the EA/RIR/IRFA, Pacific cod fishery seasons have been shortening over the last several years. Diminished season lengths restrict fishing opportunities for those permit holders who depend on the fishery. The Council was concerned that as other management measures are implemented, latent LLP holders could gravitate toward open fisheries such as the BSAI Pacific cod trawl fishery. The result could be the economic dislocation for those trawl LLP holders dependent on the fishery. Potentially, an increase in effort in groundfish fisheries that are currently fully utilized, such as Pacific cod, could increase the risk of harvesters exceeding TAC before NMFS could close the fisheries. Additionally, it is possible that harvesters reentering trawl fisheries may not have as much familiarity with specific fishery techniques or areas as current participants. These newer participants could fish in ways that would increase overall bycatch relative to the current and more experienced trawl vessel operators.

One of the factors contributing to latent trawl LLP licenses is NMFS' implementation of three LAPPs in the past decade that assign transferrable exclusive harvest privileges to participants in trawl fisheries. LLP licenses with specific gear and area endorsements are required to continue to participate in each of these three LAPPs.

The AFA was passed by Congress in 1998 and defined specific vessels eligible to participate in the directed

pollock fisheries in the BSAI using catcher/processors and catcher vessels. AFA catcher/processors have received an allocation of pollock for harvest and have established a private contractual relationship to manage this allocation under a cooperative. Under the AFA, catcher vessels are allowed to form cooperatives in conjunction with the processor associated with that vessel and that cooperative may receive a permit from NMFS for an exclusive harvest privilege. The cooperative manages these exclusive harvest privileges on behalf of its members according to private contractual arrangements established by its members. Regulations that implement the AFA require that any AFA vessel that is directed fishing for pollock must be designated on an LLP license that was originally derived from the harvest activities of an AFA vessel (see regulations at 50 CFR 679.4(k)(10)), and any AFA vessel that is a member of a catcher vessel cooperative must have an LLP license with a BS or AI regulatory area trawl endorsement in order to continue to receive the benefit of the cooperative, even if that vessel is not actively fishing (see regulations at 50 CFR 679.4(l)(6)(ii)(D)). If the BS or AI endorsement on an LLP license assigned to an AFA vessel were removed, an AFA vessel would be effectively precluded from continuing to participate in the AFA.

In 2006, NMFS implemented the CG Rockfish Program that assigns a specific amount of quota share (QS) to LLP licenses. The LLP licenses were derived from trawl catcher vessel and trawl catcher/processor vessels active in the CG directed rockfish fisheries from 1996 through 2002 (November 20, 2006; 71 FR 67210). Only persons holding QS and the associated CG endorsed trawl LLP license are eligible to fish in specific CG rockfish fisheries (see regulations at 50 CFR 679.4(k)(11)). If the CG endorsement on an LLP license were removed, that QS holder would be effectively precluded from continuing to participate in the CG Rockfish Program.

Finally, in 2007, NMFS implemented Amendment 80 to the BSAI groundfish FMP (September 14, 2007; 72 FR 52668). Amendment 80 assigns a portion of the TAC for harvest by eligible non-AFA trawl catcher/processor vessels (Amendment 80 vessels) for many of the non-pollock groundfish fisheries in the BSAI. Under the Amendment 80 Program, an eligible Amendment 80 vessel may choose to join a cooperative and that cooperative will receive a permit from NMFS for an exclusive harvest privilege for a portion of the non-pollock groundfish TAC in the BSAI, and an exclusive limit on bycatch of halibut and crab prohibited species catch (PSC) associated with those fisheries. Alternatively, eligible Amendment 80 vessels can forego participation in a cooperative and continue fishing with other non-cooperative vessels in a limited access fishery. Regardless, eligible Amendment 80 vessels must be designated on an LLP license endorsed for the BS or AI in order to participate in the limited access fishery or in a cooperative, even if that vessel is not actively fishing (see regulations at 50 CFR 679.7(o)(2)). As with the AFA, if the BS or AI endorsement on an LLP license assigned to an Amendment 80 vessel were removed, that vessel would be effectively precluded from continuing to participate in the Amendment 80 Program.

Because LAPPs assign fishery participants exclusive harvest privileges and provide them with the ability to coordinate with other fishery participants in a cooperative, vessel operators are no longer forced to ''race for fish'' in an effort to harvest fish faster than their competitors. Under these conditions, vessel operators that used specific vessels may find that it is no longer economically efficient to race for fish when fishery resources may be rationally apportioned among harvesters. Harvesters may choose to consolidate fishing operations and tie up vessels, reassign them to other fisheries, or use them for fishery support services such as tenders or supply vessels. In turn, this consolidation of fishery operations means that fewer vessels are active in the fisheries, and fewer LLP licenses are assigned to these active vessels. The EA/RIR/IRFA prepared for this action notes that a substantial number of the LLP licenses that have been assigned to AFA vessels have not been used on AFA vessels during the period from 2000 through 2006 in the BSAI or GOA due to the consolidation of fishing operations encouraged by the AFA.

A second possible reason that LLP licenses are latent may be due to changes in trawl fishing capacity relative to the total allowable catch (TAC) in various BSAI and GOA groundfish fisheries. The increase in fishing capacity relative to the TAC is described in the EA/RIR/IRFA prepared for this action (see **ADDRESSES**). During the development of this proposed action, public testimony to the Council indicated that some harvesters who were not primarily active in the groundfish trawl fishery have chosen not to continue participating in trawl fisheries due to the high costs of participation and the highly competitive nature of the trawl fisheries. Public testimony also indicated that if the TAC or exvessel value of species commonly taken by trawl gear increased relative to current levels, harvesters that have not been active recently in trawl fisheries, could assign their LLP licenses to vessels and begin trawling. Any such increases in harvesting capacity could cause economic dislocation and hardship for those LLP license holders currently participating in, and depending upon, the trawl groundfish fisheries.

The third primary reason for more limited use of trawl LLP licenses is due to changes in fishery management to mitigate the potential effects of trawl fisheries on the western stock of Steller sea lions, which is listed as endangered under the Endangered Species Act. Since 2000, NMFS has implemented various management measures that limit trawling in specific areas near Steller sea lion rookeries and haulouts, and modified the seasonal apportionments of the TACs for pollock, Pacific cod, and Atka mackerel. The changes in fishery management to address Steller sea lion concerns is addressed in greater detail in the EA/RIR/IRFA prepared for this action (see **ADDRESSES**). These changes have limited opportunities for trawling in some areas and for some species, reducing the incentive for some participants to continue fishing using trawl gear.

Rationale for Removing Latent Trawl LLP Endorsements

The Council recommended removing latent trawl LLP endorsements to reduce the risk that in the future vessel operators could assign latent LLP licenses to trawl vessels, effectively reactivating those licenses and thereby increasing the amount of trawl effort in the groundfish fisheries. This additional effort could increase harvest rate in the trawl fishery, and adversely affect currently active participants by increasing competition, diluting their potential gross revenues, and creating incentives for harvesters to race for fish in a potentially wasteful manner. This action would effectively remove the potential for new effort in the fishery beyond currently active participants as defined by this proposed action, and provide some assurance to current participants that their fishing operations would not be disrupted.

The Council considered a range of options and alternatives to determine the minimum number of landings required for a trawl LLP endorsement to remain valid. The Council considered alternatives that would have required

one or two landings during 2000 through 2006, and options to apply this landing requirement to specific regulatory areas, or to apply the landing requirements to the GOA and BSAI. The range of years was selected by the Council based on the first year that the LLP was effective (2000), and the year that represented the most recent participation in the trawl fisheries, 2006. The Council considered but chose not to extend the landing requirements to 2007 based on concerns that choosing 2007 could have encouraged some participants to use their trawl LLP licenses to fish in 2007 with the sole intent of meeting qualification requirements, which would adversely affect current fishery participants and frustrate the intent of the action to reduce the number of latent LLP licenses. The Council believed including 2007 would risk including persons whose fishing was primarily speculative. The Council balanced more recent participation, including 2007 fishery participation, against considerations of economic dependence and historical fishing practices and decided to not include 2007 as an eligible year.

After a review of groundfish catch history and public testimony, the Council determined that two landings during the seven year period from 2000 through 2006 represented a minimal, but sufficient, amount of participation in the trawl fisheries to indicate some level of dependence on trawl fishing. The Council recommended that this landing requirement be applicable to each regulatory area so that endorsements would be removed only for those regulatory areas where minimum landing requirements were not met. Therefore, LLP licenses that were active in more than one regulatory area might meet the minimum landing requirements in one area but not another. The Council recommended this action to best accomplish the goals of removing latent LLP licenses because the greatest number of LLP licenses would be removed under this action. Table 1 summarizes data presented in the EA/RIR/IRFA prepared for this action (see **ADDRESSES**) which describes the percentage of LLP licenses that have been used in the specific regulatory areas for which they are endorsed.

TABLE 1. NUMBER OF LLP LICENSES WITH TRAWL ENDORSEMENTS WITH LANDINGS IN A REGULATORY AREA (2000 THROUGH 2006)

Regulatory area	Operational type	Number of LLP licenses endorsed in each regulatory area	Estimated number of LLP licenses with at least two landings in the regulatory area from 2000 through 2006
AI	Catcher Vessel	48	23
	Catcher/Processor	54	17
BS	Catcher Vessel	148	111
	Catcher/Processor	62	43
CG	Catcher Vessel	176	80
	Catcher/Processor	27	14
WG	Catcher Vessel	160	65
	Catcher/Processor	26	19

Determining the Number of Landings Assigned to an LLP License

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

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

If a vessel was designated on more than one LLP license, NMFS would assign the credit for that landing to any LLP licenses assigned to, or ''stacked,'' on that vessel at that time. Effectively, NMFS could credit a single landing to more than one LLP license. This provision would ensure that in those cases in which more than one LLP license with a specific area endorsement was assigned to a vessel that made a landing, all LLP licenses assigned to that vessel would be credited with the landing. Because NMFS, and in many cases vessel owners and operators, did not specify how specific landings should be assigned to multiple LLP licenses assigned to a vessel at the time a landing was made, this provision would resolve any disputes that may arise about the assignment of specific landings by crediting all LLP licenses used on that vessel when a landing was made. A review of the landings data indicates that during the 2000 through 2006 a total of 38 LLP licenses were stacked on 19 vessels (i.e., each of the 19 vessels was assigned two LLP licenses). Section 2.7.3 of the EA/RIR/IRFA prepared to support this action indicates that crediting each of these LLP licenses with landings would not be expected to increase the number of LLP licenses that met the landings

requirements (see **ADDRESSES**) if those LLP licenses were not credited with the landings. In addition, apportioning a landing between two LLP licenses would require developing detailed rules governing that apportionment that could unnecessarily complicate implementation and require a decision making process that would be subject to appeal.

Exemptions from the Minimum Landing Requirements

Exemption 1: LLP Licenses used on Vessels Active in the GOA.

As noted earlier, the Council recommended retaining a trawl endorsement on a catcher vessel LLP license in a regulatory area in the GOA (i.e., the CG or WG), if the LLP license were assigned to a vessel that made more than 20 landings in at least one of the regulatory areas of the GOA from 2005 through 2007. The Council intended this proposed exemption to provide catcher vessel LLP license holders who have demonstrated a substantial and recent dependence in the GOA to be able to continue to hold an endorsement in both the CG and WG. Furthermore, the option was proposed in part to allow active participants in the CG to keep their WG endorsements because several of the TACs for several groundfish species in the Western GOA have not been fully harvested in recent years. The Council reviewed a range of alternative minimum landing requirements including 40, 30 and 20 landings before recommending a minimum of 20 landings to qualify for this exemption. The Council's recommendation was based on several factors. First, public testimony by trawl participants in the GOA overwhelmingly supported allowing a limited number of participants who have been active in trawl fisheries in the GOA to continue to retain their trawl endorsements in the CG and WG even if the LLP license holders did not meet the landings requirements in one of those regulatory areas. Second, the Council reviewed the number of potentially qualifying LLP licenses and determined that requiring a minimum of 20 landings would allow LLP licenses held by participants who are active in GOA trawl fisheries in the GOA to qualify for this exemption.

NMFS data show that under a 40 landings requirement, no LLP licenses would have qualified for the exemption in the CG and only three LLP licenses would qualify in the WG, which would be inconsistent with the intent of the action to allow certain additional LLP licenses holders to retain their trawl endorsements. Under the 30 landings requirement two LLP licenses would have qualified for the exemption in the CG and nine LLP licenses in the WG. Trawl fishery participants testified to the Council that requiring a minimum of 30 landings would adversely affect a number of participants with extensive fishing activity in the GOA more than a 20 landings requirement. GOA trawl participants presented data to the Council, subsequently verified by NMFS, that a number of LLP license holders who had a clear dependence on a variety of GOA groundfish fisheries and who had been active in the WG or CG would be excluded under a minimum of 30 landing requirements, but would not be excluded under a minimum of 20 landings. Additional detail on alternatives considered and the number of potential LLP licenses that would be exempted under the various alternatives is provided in sections 2.7.2 and 2.8 of the EA/RIR/IRFA prepared to support this action (see **ADDRESSES**).

The Council chose to adopt this exemption based on a review of data and public testimony that indicated that several catcher vessel LLP license holders who used to fish in the CG and WG have not had the same opportunities in both areas since the Steller sea lion mitigation measures became effective. As a result, many harvesters have limited their participation to only one of these regulatory areas. Without this exemption, trawl fishery participants who likely would have continued to participate in both the CG and WG without the Steller sea lion mitigation measures would have their trawl endorsements in either the CG or QG revoked and would be unable to use them in the future should Steller sea lion mitigation measures be modified in ways that would be favorable to them. The Council determined that an exemption to the landing requirement is warranted for these areas in the GOA in order to qualify license holders who have established records of recent participation in GOA trawl fisheries to be able to fish both the WG and the CG regulatory areas. This exemption would apply only to LLP licenses that are designated for catcher vessels. This limited exemption would minimize the latent capacity that potentially could reenter the fishery because catcher vessels typically have lower harvesting capacity than catcher processor vessels. The EA/RIR/IRFA prepared for this action estimates that 11 CG and 12 WG trawl catcher vessel area endorsements that would have been extinguished would be retained under this proposed exemption. Under this proposed action, WG fisheries, where the TAC has not been fully harvested in recent years, would remain accessible to those LLP holders who otherwise would be considered latent LLP holders. The Council, in response to information and testimony, determined that latent catcher vessel LLP holders should have the opportunity to enter fisheries where the TAC has not been fully harvested in recent years.

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

This proposed action would also exempt any LLP license that is assigned for use in the AFA, CG Rockfish Program, or the Amendment 80 Program from the specific landing requirements in the regulatory areas for which that area endorsement is required. This exemption would apply as follows:

1. Exempt landing requirements for BS or AI area endorsements originally issued to LLP licenses for vessels qualified under the AFA, and any BS or AI area endorsement on an LLP license assigned to an AFA vessel not having any other LLP license assigned to that vessel as of the effective date of this rule.
2. Exempt landing requirements for BS or AI area endorsements originally issued to LLP licenses for vessels that may generate QS under the Amendment 80 Program.
3. Exempt landing requirements for CG area endorsements on LLP licenses that are eligible to receive QS under the CG Rockfish Program.

The Council recommended these exemptions primarily because the participants in the three LAPPs have already met stricter requirements for these specific management areas to participate in these programs. As noted earlier, a person must hold a valid LLP license with endorsements in specific regulatory areas to be eligible to participate in these LAPPs. The AFA and Amendment 80 LAPPs require that a person assign an LLP license with a valid trawl endorsement in the BS or AI to a vessel eligible under those LAPPs. Similarly, under the CG Rockfish Program, a person must have an LLP license with a trawl endorsement in the CG to participate in that LAPP. Removing LLP licenses that do not meet specific landing requirements, but that are required to continue to receive exclusive harvest allocations for these LAPPs for which they are otherwise qualified, would adversely affect LAPP participants. This is not the intent of this action. The intent of this action is

to remove latent trawl endorsements. The net effect of this exemption is that AFA LLP licenses and LLP licenses originally issued to Amendment 80 vessels that are eligible to generate QS would be subject only to the CG and WG area endorsement landing requirements proposed in this action, and the CG Rockfish Program LLP licenses would be subject only to the BS, AI, and WG area endorsement landing requirements proposed in this action.

The rule proposes that NMFS would determine which LLP licenses would be specifically eligible for this exemption from the landing requirements for each of the three LAPPs as follows:

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

NMFS proposes this implementation mechanism to exempt LLP licenses that are necessary for AFA vessels to participate in the BSAI, but would reduce the risk that a person could confound the intent of this exemption by assigning LLP licenses not originally issued to AFA vessels to an AFA vessel at any point in the future, even if that LLP license would not otherwise meet the proposed BS or AI landing requirements. NMFS would exempt LLP licenses originally derived from AFA vessels, or that are assigned to AFA vessels on the effective date of a final rule.

2. For the Amendment 80 Program, all LLP licenses with a trawl gear designation and with a BS or AI area endorsement that were originally issued based on the harvest activities of Amendment 80 vessels that may generate QS would be exempt from the landing requirements in the BS or AI. A list of the Amendment 80 vessels that were used to harvest catch that may result in the issuance of QS under the Amendment 80 Program is provided in Column A of Table 31 to part 679. The LLP licenses originally issued based on the harvest activities of those Amendment 80 vessels, and that could be subject to this proposed exemption are listed in Column C of Table 31 to part 679. This provision would ensure that LLP licenses that were originally issued to the Amendment 80 vessels that are eligible to receive QS would continue to remain valid in the BSAI. NMFS is not proposing to exempt LLP licenses assigned to Amendment 80 vessels other than those listed in Table 31 to part 679. Under the Amendment 80 Program, only those LLP licenses that were originally issued to Amendment 80 vessels would require an exemption to ensure that an Amendment 80 vessel could continue to operate in the Amendment 80 Program.

3. For the CG Rockfish Program, all LLP licenses with a trawl gear designation and with a CG area endorsement to which NMFS has assigned Rockfish QS would be exempt from the landing requirements in the CG. The intent of this proposed provision would be to ensure that LLP licenses that were issued QS and are necessary to participate in the CG Rockfish Program could continue to be used in the CG, and would remain valid.

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

Background on Aleutian Island Fisheries

The opportunity for catcher vessels to fish in the Aleutian Islands has been somewhat limited until processing and fishery support facilities developed in Adak, Alaska, the closest port to many of the fishing grounds in the Aleutian Islands. Adak was an operation and supply location for the U.S. military in the 1940s, and was turned into a Naval Air Station after World War II. In the 1990s, the Aleut Corporation, the Alaska Native Regional Corporation representing native shareholders from the Aleutian Islands, acquired Adak's facilities in a land transfer agreement with the Federal government. Since the closure of the naval facilities in 1997, the Aleut Corporation has sought to transform Adak into a fishery and processing center for the Aleutian Islands. Currently, Adak Fisheries, LLC, operates a processing plant in Adak, which processes crab, groundfish, halibut, and sablefish. The Aleut Corporation has also formed a wholly owned subsidiary, the Aleut Enterprise Corporation, with the express purpose of developing economic activities in Adak, including fisheries operations.

Congress, the Council, and NMFS have developed and implemented a series of programs in recent years that provide harvest opportunities for catcher vessels in the Aleutian Islands. They attempted to provide economic opportunities for harvesters and processors in the Aleutian Islands, specifically for the community of Adak. For example, section 803 of the Consolidated Appropriations Act of 2004 (Public Law 108–199), allocates the Aleutian Islands directed pollock fishery to the Aleut Corporation, or its authorized agents, for the economic development of Adak. NMFS published a final rule to implement section 803 on March 1, 2005, (70 FR 9856). Also in 2005, NMFS implemented the Crab Rationalization Program, a LAPP for BSAI crab fisheries (March 2, 2005, 70 FR 10174) that allocates 10 percent of the TAC for Western Aleutian Islands golden king crab (*Lithodes aequispinus*) to a specific entity representing the community of Adak. The Crab Rationalization Program also places geographic delivery requirements on a portion of the remaining Western Aleutian Islands golden king crab TAC that favors processing in Adak and the nearby community of Atka. In 2007, NMFS implemented the Amendment 80 Program which specifies that a portion of the Aleutian Islands Pacific ocean perch and Atka mackerel fisheries would be available for harvest by trawl catcher vessels that may choose to land their catch in Adak or Atka (September 14, 2007, 72 FR 52668).

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

Commercial fishing grounds often occur within State waters (i.e., within 3 nautical miles of the coastline) on the narrow continental shelf around some of the Aleutian Islands because of the bathymetry of the region and the life

histories of the target species; however, these fishery resources are also present in Federal waters. In recent years, many of the catcher vessels actively fishing in the Aleutian Islands and delivering their catch to Adak, and to a lesser extent, Atka, have harvested fish from State waters, either under the GHL during the State-managed Pacific cod fishery, or under the Federal TAC during the parallel fishery. Many of these vessels are not currently designated on an LLP license with an AI endorsement.

Rationale for Issuing New AI Area Trawl Endorsements

This proposed action would assign new AI area endorsements to provide additional harvest opportunities to non-AFA trawl catcher vessels that have been active in State waters in the Aleutian Islands in recent years, but which are not designated on an LLP license with an AI area endorsement. These new endorsements would provide additional harvesting opportunities in the Aleutian Islands to those participants who have demonstrated dependence on Aleutian Islands groundfish resources. These endorsements are also likely to facilitate shore-based processing operations in Adak and Atka by providing greater harvesting opportunities to the catcher vessel fleet currently delivering to Adak and Atka. These new AI area endorsements would be assigned to LLP licenses that are assigned to non-AFA trawl catcher vessels because those vessels have been active in the fisheries in the Aleutian Islands, and AFA LLP licenses that already hold AI area endorsements would continue to be eligible to use those LLP licenses to fish in the Aleutian Islands under the proposed exemption to the landing requirements described earlier in this preamble. In particular, these new AI area endorsements would provide additional opportunities for catcher vessels to harvest and process Pacific cod in the Aleutian Islands. Pacific cod is the groundfish species most frequently targeted by non-AFA catcher vessels in the State GHL and parallel fisheries in the Aleutian Islands and therefore the Council used those landings as the basis for determining eligibility to receive an AI area endorsement.

This proposed action would recognize the recent participation by catcher vessels in the Aleutian Islands by allowing those vessels to extend their fishing operations to Federal waters using trawl endorsed LLP licenses. This proposed rule would remove a number of existing, but latent, trawl endorsements currently endorsed for the AI regulatory area, and issue new AI trawl endorsements for those currently active in the fishery. The net effect of this proposed rule is to provide harvest opportunities in Federal waters to those currently active in the Aleutian Islands but who are not able to access Federal waters because they lack an AI trawl endorsement. Even though a number of latent AI endorsements are currently available, many of those AI endorsements are latent and are assigned to LLP licenses that are held by persons who are not active participants in the Aleutian Islands groundfish fisheries. In order to ensure that Aleutian Island resources can be effectively harvested in both State and Federal waters by currently active participants, the Council recommended and NMFS proposes to remove latent AI trawl endorsements from LLP licenses not being used in the Aleutian Islands and issue new AI trawl endorsements to best accomplish that goal.

In recommending this action, the Council balanced the potential benefits against the potential negative effect on existing fishery participants in the Aleutian Islands. This proposed action would not increase the total amount of the TAC harvested in the BSAI. The TAC would continue to limit total harvests. This proposed action could shift the proportion of groundfish harvested by trawl vessels relative to other vessels in the Aleutian Islands thereby affecting the associated ex-vessel revenues for existing fishery participants. LLP license holders who are issued new AI trawl endorsements would be provided with additional harvest opportunities in Federal waters that could be more economic to harvest. Processing facilities in the Aleutians, specifically those located in the communities of Adak and Atka, could benefit from access to Federal resources that could be more economically processed than fishery resources available only in State waters. The EA/RIR/IRFA prepared to support this action provides a more complete description of the effect of the proposed action (see ADDRESSES). NMFS estimates that 12 new AI area endorsements, mostly for smaller sized vessels, are estimated to be created, as described in the EA/RIR/IRFA prepared for this action.

Two different types of AI area endorsements would be created. First, non-AFA trawl catcher vessels that are equal to or greater than 60 feet LOA and that have made at least one landing in either the State GHL or parallel fishery and have made at least 1,000 metric tons (mt) of Pacific cod landings in the BSAI from 2000 through 2006 would be eligible to receive an AI area endorsement. Second, non-AFA trawl catcher vessels that are less than 60 feet LOA and that have made at least 500 mt of Pacific cod landings in the parallel fishery from 2000 through 2006 would be eligible to receive an AI endorsement. NMFS would assign these new AI endorsement to the LLP licenses that designate eligible vessels at the time of the effective date of this rule. The EA/RIR/IRFA prepared for this action was based on the best available data and estimates that eight AI area endorsements would be issued based on the catch history of vessels less than 60 feet LOA, and four AI area endorsements would be issued based on the catch history of vessels equal to or greater than 60 feet LOA (see ADDRESSES).

The Council recommended different criteria for catcher vessels less than 60 feet LOA and those equal to or greater than 60 feet LOA. Vessels less than 60 feet LOA are typically adapted to fish in multiple fisheries using multiple gear types and are subject to a different range of monitoring and enforcement and recordkeeping and reporting requirements under existing regulations than vessels equal to or greater than 60 feet LOA. In addition, LLP licenses initially issued based on the documented landings of vessels less than 60 feet LOA cannot be used on vessels greater than 60 feet LOA. Because of the operational and regulatory distinctions applicable to vessels less than and greater than 60 feet LOA, the Council recommended different criteria be applied to determine whether an AI trawl endorsement would be issued to vessels based on their size.

Data in section 2.7.5 of the EA/RIR/IRFA prepared to support this proposed action indicate that only one LLP license with an AI endorsement issued to a non-AFA catcher vessel has been used since 2000 and the available information indicates that this LLP license is not likely to have been used on a vessel less than 60 feet LOA (see ADDRESSES). The Council recognized that because at most one active LLP license is available for non-AFA trawl catcher vessels, operators of vessels less than 60 feet LOA that are active in Pacific cod fisheries in State waters in the Aleutian Islands do not have the ability to purchase an LLP license and fish in Federal waters.

The Council recommended that landings in both the State GHL and parallel Pacific cod fishery for vessels equal to or greater than 60 feet LOA were appropriate criteria to determine the most recent participants that should

qualify to receive an AI trawl endorsement, whereas only landings in the parallel fishery would be appropriate criteria to determine the most recent participants that should qualify to receive an AI trawl endorsement for vessels less than 60 feet LOA. The Council chose to recommend that only Pacific cod landings be used to determine if a vessel met the minimum landing requirements for a new AI trawl endorsement because data in section 2.7.5.4 of the EA/RIR/IRFA prepared for this proposed action indicates that non-AFA trawl catcher vessels almost exclusively harvest Pacific cod in the Aleutian Islands and catch of other species (e.g., Atka mackerel and Pacific ocean perch) is primarily incidentally caught during Pacific cod directed fishing. Although the qualification criteria for catcher vessels less than 60 feet LOA are more restrictive (i.e., limited to landings in the parallel (Federal) fishery and not including landings in the State GHL Pacific cod fishery) NMFS data indicate that no additional vessels less than 60 feet LOA would have met the 500 mt landing threshold (the Council's preferred alternative) and qualified for an AI area endorsement if both State GHL and parallel fishery landings were included. Therefore, the Council determined that including State GHL Pacific cod fishery participation for vessels less than 60 feet LOA would not affect the number of qualifying licenses receiving an AI area endorsement under the proposed action.

The Council analyzed a range of minimum landings requirements of Pacific cod from 50 mt to 500 mt for non-AFA trawl catcher vessels less than 60 feet LOA and from 500 to 1,000 mt for non-AFA trawl catcher vessels equal to or greater than 60 feet LOA to qualify for an AI endorsement. For vessels greater than 60 feet LOA, the Council chose to recommend that a minimum of 1,000 mt of Pacific cod landings in the BSAI during the 2000 through 2006 time frame based would be required to qualify for a new AI endorsement. The Council chose the same time frame (i.e., 2000 through 2006) as the proposed action to remove latent trawl LLP licenses based on the first year that the LLP was effective (2000), and 2006 which represented recent participation in the trawl fisheries. The Council chose not to extend the landing requirements to 2007 based on concerns that choosing 2007 could have encouraged some participants to expand their efforts in the Aleutian Islands Pacific cod fishery with the sole intent of meeting qualification requirements, which would adversely affect current fishery participants. Including 2007 would increase the risk of including persons who had engaged in purely speculative fishing for purposes of qualifying for a trawl endorsement. The Council also considered granting AI trawl endorsements for vessels with a minimum of 500 mt of Pacific cod landings. The Council chose to recommend a more stringent landing requirement (i.e., 1,000 mt) to ensure that only participants who had been consistent and had extensive participation in the Aleutian Islands Pacific cod fishery would qualify. The Council determined that the 500 mt threshold would not achieve this objective as well as the higher threshold of 1,000 mt. To support this decision, the Council reviewed public testimony and information presented in the EA/RIR/IRFA that indicated that vessels with the greatest economic dependence on Aleutian Islands Pacific cod resources had a minimum of 1,000 mt of landings. Allowing additional vessels to qualify with a lower landing threshold would not achieve the dual goals of providing opportunities to vessel operators who were historically active in the AI Pacific cod fisheries while minimizing the potential for additional adverse effects on other fishery participants that could result from the issuance of additional AI area trawl endorsements. Furthermore, lowering the threshold would increase the pool of participants and dilute the revenues of those participants dependent on the fishery. The Council, in the EA/RIR/IRFA, reviewed gross revenue figures for the fishery and ascertained what revenue levels would need to be realized by those who appeared to economically depend on the fishery.

The Council used a similar process to determine the appropriate landings criteria for vessels less than or equal to 60 feet LOA. The Council chose the same time frame (i.e., 2000 through 2006) as the proposed action to remove latent trawl endorsements. The range or years was selected by the Council based on the first year that the LLP was effective (2000), and 2006 which represented recent participation in the trawl fisheries. The Council chose not to extend the landing requirements to 2007 based on concerns that choosing 2007 could have encouraged some participants to use their trawl LLP licenses to fish in 2007 with the sole intent of meeting qualification requirements, which would adversely affect current fishery participants and frustrate the intent of the action to reduce the number of latent LLP licenses. The Council considered a range of lower landing thresholds in recognition of the lower catch capacity of smaller vessels ranging from 50 mt to 500 mt. Landings data indicate that 10 AI endorsements would have been assigned under the 50 mt landing threshold, and 10 under both 250 and 500 mt. landing threshold. These data indicate that participation by smaller vessels was relatively consistent at a landings threshold over 500 mt, and therefore best represented consistent historic participation. In its recommendation, the Council was guided by public testimony and a review of historic landings data and sought to achieve the goals of providing additional harvest opportunities and minimize potentially adverse effects on current Federal fishery participants. Additional detail is provided in section 2.7.5 and 2.8 of the EA/RIR/IRFA prepared for this proposed action (see ADDRESSES).

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

Islands, there could be increased incentive to sell the AI area endorsement, apart from the LLP license. Allowing the AI area endorsement to be severable from the LLP license to which it is originally assigned would avoid a situation in which AI endorsements would be irrevocably tied to LLP licenses that were not being used on vessels operating in the Aleutian Islands. The Council concluded that allowing severable AI endorsements would not lead to excess effort in the AI regulatory area.

The Council determined that this severability provision was not necessary for the AI area endorsements to be issued based on vessels that are equal to or greater than 60 feet LOA. As noted earlier, the Council sought to balance the objectives of reducing latent fishing capacity in the first proposed action included in this rule with the goal of providing additional harvesting and processing alternatives in the Aleutian Islands. The Council assessed these goals and expressed concern that allowing a transferable AI area endorsement for a vessel less than 60 feet LOA could increase potential fishing effort in Federal waters and adversely affect the currently active participants. In addition, three of the four vessel operators the Council believes may qualify for this provision indicated in public testimony that they intended to move their operations to Adak and use the AI area endorsement themselves. Given these factors, the Council decided not to make these AI area endorsements severable and transferable.

Assigning an AI Area Endorsement to a Specific LLP License

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

The first method is applicable to non-AFA catcher vessels less than 60 feet LOA that meet the requisite minimum 500 mt landings requirement to receive an AI endorsement. NMFS would assign an AI endorsement based on the landings of a non-AFA trawl catcher vessel to an LLP license that 1) designates that non-AFA vessel on the effective date of this regulation; 2) was not derived in whole or in part from the qualifying fishing history of an AFA vessel; 3) has a trawl gear designation; 4) does not have a catcher/processor vessel designation; and 5) does not have an MLOA equal to or greater than 60 feet.

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

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

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

Transfers of AI Endorsements

Only LLP AI area endorsements for less than 60 LOA would be transferrable separate from the LLP. To facilitate the transfers, NMFS proposes to modify LLP license transfer regulations at 50 CFR 679.4(k)(7) to clarify the process for transferring an AI area endorsement independent of the LLP license. NMFS would specify that a new AI area endorsement may be transferred from the LLP license to which it was originally issued to another LLP license that (1) was not derived in whole or in part from the qualifying fishing history of an AFA vessel; (2) has a catcher vessel designation; (3) has a trawl gear designation; (4) has a vessel length designation of less than 60 feet LOA; and (5) is not longer than the MLOA designated on the LLP license to which that AI endorsement was originally issued. These limitations would meet the Council's intent to provide opportunities for LLP licenses used on smaller non-AFA catcher vessels.

The transfer process for an AI area endorsement would be similar to the procedures currently in place for transferring an LLP license. First, a person seeking to transfer an AI area endorsement would need to submit a complete transfer application for an LLP license to the Regional Administrator as described under 50 CFR 679.4(k)(7). As part of that application process, the person would need to specify the specific LLP license to which the transferred AI area endorsement would be assigned. NMFS would not approve the transfer unless the AI area endorsement was assigned for transfer to an LLP license that met the five requirements specified above.

NMFS also proposes to modify LLP license transfer regulations at 50 CFR 679.4(k)(7)(v) to clarify that the Regional Administrator will transfer an AI area endorsement based on a court order, operation of law, or a security agreement if the Regional Administrator determines that the transfer application is complete and the transfer will not otherwise violate any of the provisions relating to LLP license transfers. This change would be necessary to ensure that AI endorsements are treated in the

same manner that applies to LLP licenses in general.

NMFS proposes to apply the same limitations on the number of transfers of AI area endorsements that currently exist for LLP licenses. This limitation would ensure that AI endorsements are not traded in a manner that could substantially increase the potential number of vessels actively fishing in the AI area, and would subject AI endorsements to the same transfer restrictions applicable to LLP licenses. Specifically, an AI area endorsement could be voluntarily transferred only once in any calendar year. A voluntary transfer is a transfer other than one pursuant to a court order, operation of law, or a security agreement. NMFS would not approve an application for transfer that would cause a person to exceed the transfer limit of this provision. NMFS would consider any transfer of an AI endorsement from one LLP license to another LLP license, or the transfer of an LLP license to which an AI endorsement is affixed as a voluntary transfer of an AI endorsement. This provision is consistent with the Council's intent to limit the transfer of AI area endorsements in the same manner as those applicable to LLP licenses. The Council recommended applying the same transfer provisions to AI endorsements as LLP licenses to ensure that NMFS would not have two inconsistent, unduly complex, and more costly management systems to accomplish the same goal. Additional information on LLP transfers is provided in section 2.7.5 and 2.8[t14] of the EA/RIR/IRFA prepared for this action (see ADDRESSES).

Net Number of Trawl LLP Endorsements Remaining by Regulatory Area The EA/RIR/IRFA prepared for this action includes an estimate of the net effects of the two proposed actions on the number of trawl endorsements by regulatory area. Tables 2 and 3 show the number of trawl CV and trawl CP LLP license area endorsements estimated to remain and estimated to be removed under the proposed actions. Because this action would create up to 12 new AI area endorsements on non-AFA trawl CV licenses, the total number and percent of AI area endorsed catcher vessel LLP licenses increases compared to the status quo.

TABLE 2. NUMBER OF TRAWL CV LLP ENDORSEMENTS REMAINING BY REGULATORY AREA

Area	Current number	Number exempt	Number removed	Number of new AI endorsements	Total number and percent of endorsements remaining	Total number and percent of endorsements remaining
AI	48	42	5	12	55	115%
BS	148	101	33	n/a	115	78%
CG	176	46	80	n/a	96	55%
WG	160	0	83	n/a	77	48%

TABLE 3. NUMBER OF TRAWL CP LLP ENDORSEMENTS REMAINING BY REGULATORY AREA

Area	Current number	Number exempt	Number removed	Total number and percent of endorsed licenses remaining	Total number and percent of endorsed licenses remaining
AI	54	46	6	48	89%
BS	62	55	4	58	94%
CG	27	17	7	20	74%
WG	26	0	7	19	73%

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

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

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

In the official record, NMFS would assume that landings made in 2000 and 2001 would be assigned to the LLP license originally issued based on that vessel. This assumption could be rebutted by an LLP license holder. An LLP license holder would need to provide NMFS with written documentation that clearly indicates that an LLP license was used on a vessel other than the originally qualifying vessel in order to rebut this assumption. NMFS would reassign landings from a vessel other than the original qualifying vessel only if these claims were accepted.

If the proposed rule is approved and implemented, NMFS will mail a notification to each trawl LLP license

holders based on the address on record at the time the notification is sent about the status of each regulatory area endorsement for that LLP license or whether a new AI area endorsement would be assigned to an LLP license.. NMFS would provide information concerning the proposed effects of any changes to any trawl area endorsements on an LLP license to the LLP license holder and provide a single 30-day evidentiary period from the date that notification is sent for an LLP holder to submit any supporting information, or evidence, to verify that the information contained in the official record is inconsistent with his or her records.

An LLP license holder who submits claims that are inconsistent with information in the official record would have the burden of proving that the submitted claims are correct. NMFS would not accept inconsistent claims, unless verified by clear written documentation. NMFS would evaluate additional information or evidence to support an LLP license holder's inconsistent claims submitted prior to or within the 30-day evidentiary period. If NMFS determines that the additional information or evidence proves that the LLP license holder's inconsistent claims were indeed correct, NMFS would act in accordance with that information or evidence. However, if after the 30-day evidentiary period, NMFS were to determine that the additional information or evidence did not prove that the LLP license holder's inconsistent claims were correct, NMFS would deny the claim. NMFS would notify the applicant that the additional information or evidence did not meet the burden of proof to overcome the official record through an initial administrative determination (IAD).

NMFS' IAD would indicate the deficiencies and discrepancies in the information or the evidence submitted in support of the claim. NMFS' IAD would indicate which claims could not be approved based on the available information or evidence, and provide information on how an applicant could appeal an IAD. The appeals process is described under 50 CFR 679.43. A person who appeals an IAD would be eligible to use the disputed LLP license with the endorsements listed on the LLP license until final action by NMFS on the appeal. NMFS would reissue any LLP licenses pending final action by NMFS as interim LLP licenses. Once final action has been taken, NMFS would reissue the LLP license as a non-interim LLP license. NMFS would prohibit the transfer of an interim LLP license until the appeal is resolved. Transfer restrictions would be imposed on interim LLP licenses to ensure that a person would not receive an LLP license by transfer and have the endorsement removed through an appeal process that was initiated and conducted by the previous LLP license holders process that a transferee could not control, and which could substantially affect the value and utility of that LLP license.

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

Housekeeping Revisions to LLP Transfer Application and Permit Regulations

NMFS proposes to modify regulations at 50 CFR 679.4(k)(7)(iii) to consolidate and clarify the regulations describing the contents of the LLP transfer application. These proposed changes would replace the current list of specific information required on an LLP transfer application in regulation with a more general reference to the actual LLP application form. NMFS proposes these changes to remove references to specific regulatory requirements that are already specified on the LLP application form that has been approved by OMB. Removing the list of required elements on an LLP transfer application from the regulations minimizes the risk that the regulations and OMB approved collection of information forms would not mismatch. In addition, these changes would provide NMFS with the flexibility to modify the LLP transfer application in the future simply by receiving approval from OMB to modify the collection of information without having to change the regulations as well. This proposed housekeeping measure would not remove or otherwise modify the information currently required in the existing LLP application, with one exception: this general reference would encompass the requirement that an applicant must specify the LLP license onto which an AI area endorsement would be transferred. However, because the application currently requires that the LLP license be identified, this change does not modify the burden or cost of the PRA collection but rather provides an additional option from which to choose on the application.

In addition, NMFS proposes modifying the regulations at 50 CFR 679.7(i)(2) through (5), and 50 CFR 679.7(i)(8)(i) to remove the requirement that a person must have the original LLP license onboard to directed fishing for license limitation groundfish, fish for LLP crab, or scallops, or process those species. NMFS proposes to change these regulations to allow a person to have a legible copy of the original LLP license onboard. The current regulatory requirement can result in expensive delays to vessel operations if the vessel operator must wait for an original LLP license to arrive via mail after an LLP license has been transferred, or to replace a lost or damaged original. NMFS has adequate means to track the designation of LLP licenses on specific vessels without requiring the original LLP license to be onboard.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this proposed rule is consistent with Amendments 92 and 82, the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

Regulatory Impact Review (RIR)

An RIR was prepared for this action that assesses all costs and benefits of available regulatory alternatives. The RIR describes the potential size, distribution, and magnitude of the economic impacts that this action may be expected to have. The RIR considers all quantitative and qualitative measures. The alternative proposed in this rule was chosen based on those measures that maximize net benefits to the affected participants in the trawl fisheries. Copies of the RIR prepared for this proposed rule are available from NMFS (see **ADDRESSES**). Specific aspects of the RIR are discussed in the next section.

Initial Regulatory Flexibility Analysis (IRFA)

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

describes and estimates the number of small entities to which the proposed rule would apply; describes any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; identifies any overlapping, duplicative, or conflicting Federal rules; and describes any significant alternatives to the proposed rule that accomplish the stated objectives of the MSA and any other applicable statutes, and that would minimize any significant adverse economic impact of the proposed rule on small entities. A summary of that analysis follows.

Rationale, Objectives, and Legal Basis of the Proposed Rule

The IRFA describes in detail the reasons why this action is being proposed, describes the objectives and legal basis for the proposed rule, and discusses both small and other regulated entities to adequately characterize the fishery participants. The MSA is the legal basis for the proposed rule. The objectives of the proposed rule are to reduce the number of latent trawl endorsements on LLP licenses and to provide additional AI trawl endorsements based on the catch history of specific non-AFA trawl catcher vessels. NMFS expects the proposed action to reduce uncertainty for active participants and provide additional harvest opportunities for specific participants in the Federal waters of the Aleutian Islands.

Number of Small Entities to Which the Proposed Rule Would Apply

The directly regulated entities under this proposed rule are holders of LLP licenses endorsed for trawl activity. For purposes of an IRFA, 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 IRFA estimates that a maximum of 181 entities hold LLP licenses with trawl endorsements, of these an estimated 174 small entities would be directly regulated by this action. The IRFA notes that estimates of the number of small entities directly regulated by this proposed action are complicated by limited LLP license holder ownership information, and are based on available records of employment and information on participation in other fisheries. The estimate of the number of small entities is conservative. Other supporting businesses may also be indirectly affected by this action if it leads to fewer vessels participating in the fishery. These impacts are analyzed in the RIR prepared for this action (see **ADDRESSES**).

Impacts on Directly Regulated Small Entities

The proposed action is to prevent future economic dislocation to trawl LLP license holders who have demonstrated consistent and recent participation in the trawl fisheries and provide additional harvest and processing opportunities in the Aleutian Islands, and the overall impact to small entities is expected to be positive. Impacts from the proposed rule would accrue differentially (i.e., some entities could be negatively affected and others positively affected). The Council considered an extensive range of alternatives and options as it designed and evaluated the potential for changes to groundfish management in the BSAI and GOA including the ''no action'' alternative.

Three alternative approaches for the management of trawl LLP licenses in the BSAI and GOA groundfish fisheries are presented in the EA/RIR/IRFA: Alternative 1–Status Quo/No Action; Alternative 2–remove trawl endorsements in either the BSAI or GOA from LLP licenses if minimum landing requirements were not met; and Alternative 3, the preferred alternative, to remove trawl endorsements in the BS, AI, WG, or CG areas from LLP licenses if minimum landing requirements were not met. Alternative 2 and Alternative 3 would include a provision to add a new AI area endorsement for use on non-AFA trawl catcher vessel endorsed LLP licenses if minimum landing requirements were met. In addition, each of these alternatives examined options for a varying range of landing criteria and mechanisms for adding AI area endorsements. These alternatives and the options examined in the context of these alternatives constitute the suite of ''significant alternatives'' for the proposed action for the purposes of the RFA.

Compared with the status quo, the proposed action selected by the Council would be the alternative that would minimize adverse economic impacts on the directly regulated small entities. Although the alternatives under consideration in this proposed action would be expected to provide greater economic stability for trawl LLP license holders with recent participation in the trawl fisheries by reducing the potential for substantial increases in fishing effort from latent LLP license holders, and would provide additional harvesting and processing opportunities in the AI for directly regulated small entities, in no case are these combined impacts expected to be substantial. Both Alternative 2 and Alternative 3 would extinguish trawl endorsements on LLP licenses that have had little or no participation in trawl fisheries since 2000, therefore the effect of this action on those directly regulated entities is expected to be minimal. In addition, the addition of new AI endorsements may provide additional harvest opportunities for some non-AFA trawl catcher vessels in Federal waters, many of which are currently active in State waters and are catching fish assigned to the Federal TAC under the parallel fishery. It is not clear that these new AI area endorsements would substantially increase fishing effort. Although none of the alternatives is expected to have any significant economic or socioeconomic impacts, the preferred Alternative 3 minimizes the potential negative impacts that could arise under Alternative 1, the status quo alternative.

Projected Reporting, Recordkeeping and Other Compliance Requirements

The proposed rule would require additional reporting, recordkeeping, and other compliance requirements. Specifically, NMFS would require that a person who is transferring an AI endorsement that is issued based on the landings of a non-AFA trawl catcher vessel less than 60 feet LOA would need to specify the LLP license to which that AI area endorsement is being transferred. This additional requirement would require a change in the application for transfer of an LLP license.

Duplicate, Overlapping, or Conflicting Federal Rules

No federal rules that might duplicate, overlap, or conflict with this proposed action have been identified.

Collection-of-Information

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under Control Number 0648–0334. Public reporting burden is estimated to average two hours for the Application to Transfer an LLP license and four hours for an appeal of an initial administrative determination per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSEES) and by e-mail to *David__Rostker@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 PRA, unless that collection of information displays a currently valid OMB Control Number.

Executive Order 12866

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

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 22, 2008.

Samuel D. Rauch III,

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

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

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

Authority: 16 U.S.C. 773 *et seq.*; 1540; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 105–277; Pub. L. 106–31; Pub. L. 106–554; Pub. L. 108–447; Pub. L. 109–479.

2. In § 679.4,

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

B. Paragraphs (k)(7)(i), (k)(7)(ii) introductory text, (k)(7)(iii), (k)(7)(v), (k)(7)(vi), and (k)(7)(viii)(A) are revised. The additions and revisions read as follows:

§ 679.4 Permits.

* * * * *

(k) * * *

(4) * * *

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

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

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

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

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

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

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

(*2*) The groundfish license is assigned to an AFA vessel on [THE EFFECTIVE DATE OF THIS REGULATION]; and

(*3*) No other groundfish license with a Bering Sea or Aleutian Island area endorsement is assigned to that AFA vessel on [THE EFFECTIVE DATE OF THIS REGULATION.

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

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

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

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

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

(*2*) It has a trawl gear designation;

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

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

(B) If a non-AFA catcher vessel that is equal to or greater than 60 feet LOA was used to make at least one legal landing in State of Alaska waters adjacent to the Aleutian Islands Subarea using trawl gear during the period from January 1, 2000, through December 31, 2006, or one landing of Pacific cod from the State of Alaska Pacific cod fishery during the period from January 1, 2000 through December 31, 2006, according to the official record, NMFS shall issue an Aleutian Island area endorsement with a trawl gear designation to a groundfish license assigned to the vessel owner according to the official record, provided that the groundfish license assigned to that non-AFA catcher vessel meets the following criteria:

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

(*2*) It has a trawl gear designation;

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

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

(C) NMFS will assign the AI endorsement to an eligible groundfish license held by the vessel owner beginning [AT THE TIME OF THE EFFECTIVE DATE OF THIS RULE] based on the official record.

(D) If the vessel owner does not hold a groundfish license to which an AI endorsement may be assigned on [THE EFFECTIVE DATE OF THIS RULE] , or if the vessel owner disagrees with the groundfish license to which NMFS assigns the AI endorsement according to the official record, the vessel owner will have the opportunity to challenge the official record as described in paragraph (k)(4)(x) of this section to amend the official record to designate an otherwise eligible groundfish license. If the official record is subsequently amended, NMFS will assign the AI endorsement to the groundfish license specified in the amended official record.

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

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

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

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

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

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

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

(*2*) If more than one person is claiming the same legal landing, then each groundfish license for which the legal landing is being claimed will be credited with the legal landing;

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

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

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

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

* * * * *

(7) * * *

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

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

* * * * *

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

* * * * *

(v) *Transfer by court order, operation of law, or as part of a security agreement*. The Regional Administrator will transfer a groundfish license, Aleutian Island area endorsement as described under paragraph (k)(7)(viii)(A) of this section, or a crab species license based on a court order, operation of law, or a security

agreement if the Regional Administrator determines that the transfer application is complete and the transfer will not violate any of the provisions of this section.

(vi) *Voluntary transfer limitation.* A groundfish license, Aleutian Island area endorsement as described under paragraph (k)(7)(viii)(A) of this section, or a crab species license may be voluntarily transferred only once in any calendar year. A voluntary transfer is a transfer other than one pursuant to a court order, operation of law, or a security agreement. An application for transfer that would cause a person to exceed the transfer limit of this provision will not be approved. A transfer of an Aleutian Island area endorsement as described under paragraph (k)(7)(viii)(A) of this section to another LLP license, or the transfer of a groundfish license with an Aleutian Island area endorsement as described under paragraph (k)(7)(viii)(A) of this section attached to it will be considered to be a transfer of that Aleutian Island area endorsement.

* * * * *

(viii) * * *

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

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

(*2*) Has a catcher vessel designation;

(*3*) Has a trawl gear designation;

(*4*) Has an MLOA of less than 60 feet LOA; and

(*5*) A complete transfer application is submitted to the Regional Administrator as described under this paragraph (k)(7), and that application is approved.

* * * * *

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

§ 679.7 Prohibitions.

* * * * *

(i) * * *

(2) Conduct directed fishing for license limitation groundfish without a copy of a valid groundfish license, except as provided in § 679.4(k)(2);

(3) Conduct directed fishing for LLP crab species without a copy of a valid crab license, except as provided in § 679.4(k)(2);

(4) Process license limitation groundfish on board a vessel without a copy of a valid groundfish license with a catcher/processor designation;

(5) Process LLP crab species on board a vessel without a copy of a valid crab species LLP license with a catcher/processor designation;

* * * * *

(8) * * *

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

* * * * *

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