

■ 4. Part 586 is revised to read as follows:

**PART 586—FUEL SYSTEM INTEGRITY  
UPGRADE PHASE-IN REPORTING  
REQUIREMENTS**

Sec.

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**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

**§ 586.1 Scope.**

This part establishes requirements for manufacturers of passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less to submit a report, and maintain records related to the report, concerning the number of such vehicles that meet the upgraded requirements of Standard No. 301, *Fuel systems integrity* (49 CFR 571.301).

**§ 586.2 Purpose.**

The purpose of these requirements is to assist the National Highway Traffic Safety Administration in determining whether a manufacturer has complied with the upgraded requirements of Standard No. 301 (49 CFR 571.301).

**§ 586.3 Applicability.**

This part applies to manufacturers of passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less.

**§ 586.4 Definitions.**

(a) All terms defined in 49 U.S.C. 30102 are used in their statutory meaning.

(b) *Bus, gross vehicle weight rating, multipurpose passenger vehicle, passenger car, and trucks* are used as defined in 49 CFR 571.3.

(c) *Production year* means the 12-month period between September 1 of one year and August 31 of the following year, inclusive.

**§ 586.5 Response to inquiries.**

At any time during the production years ending August 31, 2007, August 31, 2008, and August 31, 2009, each manufacturer must, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model, and vehicle identification number) that have been certified as complying with S6.2(b) of

Standard No. 301 (49 CFR 571.301). The manufacturer's designation of a vehicle as a certified vehicle is irrevocable.

**§ 586.6 Reporting requirements.**

(a) *Phase-in reporting requirements.* Within 60 days after the end of the production years ending August 31, 2007, August 31, 2008, and August 31, 2009, each manufacturer must submit a report to the National Highway Traffic Safety Administration concerning its compliance with S6.2(b) of Standard No. 301 (49 CFR 571.301) for its passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of less than 4,536 kilograms (10,000 pounds) produced in that year. Each report must—

- (1) Identify the manufacturer;
- (2) State the full name, title, and address of the official responsible for preparing the report;
- (3) Identify the production year being reported on;
- (4) Contain a statement regarding whether or not the manufacturer complied with the requirements of S6.2(b) of Standard No. 301 (49 CFR 571.301) for the period covered by the report and the basis for that statement;
- (5) Provide the information specified in paragraph (b) of this section;
- (6) Be written in the English language; and
- (7) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(b) *Phase-in report content.*  
(1) *Basis for statement of compliance.* Each manufacturer must provide the number of passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less manufactured for sale in the United States for each of the three previous production years, or, at the manufacturer's option, for the previous production year. A new manufacturer that has not previously manufactured these vehicles for sale in the United States must report the number of such vehicles manufactured during the current production year.

(2) *Production.* Each manufacturer must report for the production year for which the report is filed: the number of passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less that meet S6.2(b) or S6.3(b) of Standard No. 301 (49 CFR 571.301).

(3) *Vehicles produced by more than one manufacturer.* Each manufacturer whose reporting of information is affected by one or more of the express

written contracts permitted by S8.3.2 of Standard No. 301 (49 CFR 571.301) must:

(i) Report the existence of each contract, including the names of all parties to the contract, and explain how the contract affects the report being submitted.

(ii) Report the actual number of vehicles covered by each contract.

**§ 586.7 Records.**

Each manufacturer must maintain records of the Vehicle Identification Number for each vehicle for which information is reported under § 586.6(b)(2) until December 31, 2010.

**§ 586.8 Petition to extend period to file report.**

A manufacturer may petition for extension of time to submit a report under this part. A petition will be granted only if the petitioner shows good cause for the extension and if the extension is consistent with the public interest. The petition must be received not later than 15 days before expiration of the time stated in § 586.6(a). The filing of a petition does not automatically extend the time for filing a report. The petition must be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

Issued: November 21, 2003.

**Jeffrey W. Runge,**  
*Administrator.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric  
Administration**

**50 CFR Part 679**

[Docket No. 030804191-3286-02; I.D.  
071603A]

**RIN 0648-AR31**

**Fisheries of the Exclusive Economic  
Zone Off Alaska; Allocation of Pacific  
Cod Among Fixed Gear Sectors**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to implement Amendment 77 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This

action apportions the fixed gear portion of the Bering Sea and Aleutian Islands Management Area (BSAI) Pacific cod total allowable catch (TAC) among the fixed gear sectors. In addition, this action further splits the pot sector share of the TAC between pot catcher/processors and pot catcher vessels and changes how the 2 percent annual BSAI Pacific cod allocation to jig gear is seasonally apportioned and how unused portions are reallocated to other gear types. Amendment 77 and its implementing regulations are necessary to maintain the stability of the fixed gear Pacific cod fishery. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable laws.

**DATES:** Effective January 1, 2004.

**ADDRESSES:** Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802, Attn: Lori Durall; or by calling 907-586-7247.

**FOR FURTHER INFORMATION CONTACT:**

Nina Mollett, 907-586-7462 or [Nina.Mollett@noaa.gov](mailto:Nina.Mollett@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries in the exclusive economic zone of the BSAI under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations governing the groundfish fishery of the BSAI appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

## Background

The Council submitted Amendment 77 to NMFS for review and a Notice of Availability of the FMP amendment was published in the **Federal Register** on July 22, 2003 (68 FR 43342), with comments on the FMP amendment invited through September 22, 2003. The Secretary of Commerce approved Amendment 77 on October 20, 2003. The proposed rule to implement Amendment 77 was published on August 18, 2003 (68 FR 49416). The public comment period on the proposed rule ended on October 2, 2003. NMFS received letters from ten persons on either the FMP amendment, the proposed rule, or both. NMFS responds to these letters in "Response to Comments," below.

Allocation of the BSAI Pacific cod TAC among gear types began in 1994,

with the passage of Amendment 24 to the FMP. Amendment 24, and subsequently Amendment 46, allocated the Pacific cod TAC among vessels using jig gear, trawl gear, and fixed gear (hook-and-line and pot.) Under Amendment 46, which was implemented in 1997, 2 percent of the TAC was reserved for jig gear, 51 percent for fixed gear, and 47 percent for trawl gear. The amendment further split the trawl apportionment equally between catcher vessels and catcher/processors, but the fixed gear allocation was not split among the fixed gear sectors until passage of Amendment 64 in 2000 (65 FR 51553, August 24, 2000). Amendment 64 and its implementing regulations are scheduled to expire on January 1, 2004.

Amendment 64 allocated the fixed gear portion of the BSAI Pacific cod TAC among its four sectors as follows:

- 80.0 percent to hook-and-line catcher/processors;
- 0.3 percent to hook-and-line catcher vessels;
- 18.3 percent to pot vessels; and
- 1.4 percent to catcher vessels less than 60 ft (18.3 m) length overall (LOA), including pot and hook-and-line vessels (hereafter referred to as small catcher vessels).

Additional background on the prior history of Pacific cod allocations among different fishery sectors and the development of Amendment 77 is contained in the preamble to the proposed rule. Amendment 77 and its implementing regulations supersede Amendment 64.

This final rule allocates the fixed gear portion of the BSAI Pacific cod TAC among the fixed gear sectors. Vessels using hook-and-line or pot gear receive 51 percent of the Pacific cod TAC in the BSAI, under existing regulations at § 679.20(a)(7)(i)(A). Of this 51 percent, this final rule will allocate the TAC as follows:

- 80.0 percent to hook-and-line catcher/processors;
  - 0.3 percent to hook-and-line catcher vessels;
  - 3.3 percent to pot catcher/processors;
  - 15.0 percent to pot catcher vessels; and
  - 1.4 percent to small catcher vessels.
- This preserves the allocation implemented under Amendment 64, but splits the pot vessel share further between pot catcher/processors and pot catcher vessels.

Amendment 77 directs that "specific provisions for the accounting of these directed fishing allowances and the transfer of unharvested amounts of these allowances to other vessels using hook-

and-line or pot gear will be set forth in regulations."

Hence, the final rule maintains status quo provisions, except for a change in the way the 2 percent annual BSAI Pacific cod allocation to the jig gear sector is seasonally apportioned and how unused portions of the jig gear share are reallocated (rolled over) to other gear types. The jig gear quota will be apportioned through the annual TAC-setting process on a four-month basis, 40 percent, 20 percent, and 40 percent respectively for the periods January through April, May through August, and September through December. Unused jig allocations in each four-month period will be reallocated to small catcher vessels. If the small catcher vessels are unable to harvest the rolled over jig allocation, NMFS may reallocate the unused TAC to the hook-and-line catcher/processor fleet under § 679.20(a)(7)(ii)(B) of this final rule.

This reallocation policy has been contentious because the previous policy was to reallocate all unused jig gear to the hook-and-line catcher/processors. The new rollover provision represents a partial reallocation of unused jig gear from the hook-and-line catcher/processors to smaller catcher vessels. The new rollover provision was a compromise among the alternatives analyzed, because some or all of the allocation from the third four-month period probably will not be harvested by the small catcher vessels and will instead be reallocated to hook-and-line catcher/processors. The small boat fleet is most capable of fishing in the spring and summer when the weather is better than in the fall and winter. Also, the small pot catcher vessels only need a separate quota between the A and B seasons established under Steller sea lion protection measures (between June 10 and September 1), when the Pacific cod fishery is closed to pot vessels greater than or equal to 60 ft (18.3 m) LOA. At other times, the small pot catcher vessels can fish off the general 15 percent pot catcher vessel quota. Hook-and-line vessels of any size normally are prohibited from fishing for Pacific cod in the summer between June 10 and August 15, because they typically receive no halibut bycatch under the annual harvest specifications during this time period. Without a bycatch allowance, they cannot fish. Pot and jig gear vessels would be the only fixed gear vessels with access to the Pacific cod resource during this period.

## Response to Comments

With one exception, all of the letters received by NMFS commenting on

Amendment 77 or the proposed rule focused on the Council's action to change the way unharvested jig gear quota is reallocated. Six commenters wrote in support of that change, and three in opposition. The comments otherwise were generally supportive of Amendment 77 and the proposed rule implementing it. The tenth commenter did not address the provisions of Amendment 77 but criticized fishing in the North Pacific more generally. No comments were received on the proposed TAC split between pot catcher vessels and pot catcher processors. The comments on the proposed change in jig gear reallocation have been grouped by subject matter. Some of the arguments were made by more than one respondent.

*Comments on Economic and Equity Issues and Compliance With National Standards*

*Comment 1:* The proposed reallocation of unharvested jig quota is inconsistent with national standard 5: "Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose."

Many measures that the Council has adopted include reallocations, but such measures have usually also provided improved ease of management or an increased conservation benefit. In this case, the proposed rollover provisions complicate management and have potential adverse risk in regards to Steller sea lions.

*Response:* The main purpose of Amendment 77 is to maintain stability in the Pacific cod BSAI fishery by maintaining the TAC allocations for fixed gear sectors that have been in effect since September 1, 2000. The relatively modest reallocation of unused jig gear TAC to small catcher vessels is consistent with that goal. It maintains the Council's original intent to support coastal fisheries through an allocation that will benefit a group of vessels with similarities to the jig gear sector for which the quota was originally intended.

In addition, this action will support biological conservation objectives of the FMP, because the vessels potentially receiving unused Pacific cod TAC from the jig gear sector primarily will be vessels less than 60 ft (18.3 m) LOA that use pot gear. These vessels have a relatively low bycatch rate for halibut, most groundfish, and most other marine species. Hence, NMFS finds that this action is consistent with National Standard 5.

The final rule implementing Amendment 77 will slightly increase the complexity of inseason management because of the seasonal apportionments of the jig gear quota and associated rollover provisions for the unharvested amounts. Staff resources are available, however, to accommodate this fairly routine adjustment in management of the Pacific cod TAC.

The action does not change the Steller sea lion protection measures that are currently in place; any change in the potential risk to Steller sea lions is discussed in the response to Comments 16 to 19.

*Comment 2:* The proposed rollover of unharvested jig quota is inconsistent with National Standard 10: "Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea." Reallocation of TAC to small boats would pose safety at sea considerations. Fishing in the Bering Sea can be dangerous, which is why "small boat participation in the directed Pacific-cod fishery has been minimal in this region even during the years of unrestricted open access."

*Response:* The Pacific cod TAC allocations created by this action are assigned to categories of vessels and gear types. Several potential new rollover provisions were considered, and the selected provision was specifically developed to provide additional cod for the small catcher vessel sector during the months when these vessels prefer to fish, for safety reasons. Without the additional opportunity to harvest cod during the summer months, the small catcher vessel sector would be more likely to continue to compete for the portion of the cod TAC allocated to the general pot catcher vessel sector and general hook-and-line catcher vessel sector (available to vessels of all lengths) during the late winter and early spring. Providing for a reallocation of jig quota to the small catcher vessel sector may encourage these vessels to delay fishing until the summer months, when it is considered most safe for smaller vessels in the BSAI.

*Comment 3:* The proposal for the new rollover provision was initiated not by a pot vessel but a jig fisherman from Dutch Harbor, whose stated reasons included both safety and ecological concerns. From a safety perspective, this action would encourage the presence of other small vessels nearshore, which would enhance safety for the small number of jig vessels participating in the BSAI jig gear fishery.

*Response:* To the extent that this action increases the number of vessels

available to provide aid to a vessel in need, this final rule could enhance safety during the summer months. Also see response to comment 2.

*Comment 4:* The proposed rollover of unharvested Pacific cod TAC from jig gear supports the National Standard 1 requirement to provide "optimum yield from each fishery." The RIR analysis shows that the highest average value per metric ton of round cod is inshore deliveries from fixed gear catcher vessels (p 79).

*Response:* The Council did not attempt to determine which sector is most efficient in making its decision on unused jig gear cod allocations. The jig gear cod allocation amounts to only 2 percent of the total BSAI Pacific cod quota. The Council's action was intended to roughly maintain the status quo, while enhancing an opportunity for relatively small catcher vessels to continue participating in the fishery.

*Comment 5:* Freezer-longliners are highly efficient, producing frozen product of the highest quality and value. By contrast, cod kept on ice and processed long after harvest are of a lower quality and command a lower price.

*Response:* Please see the response to Comment 4.

*Comment 6:* The freezer-longliner sector has received the jig rollovers for 10 years and has grown dependent on them. The small catcher vessel fleet has not taken the rollovers, and is in no way dependent on them. The proposed reallocation of a portion of these rollovers to a fleet that 'needs room to grow' is not consistent with the problem statement.

The proposed rollover provisions would take TAC from the freezer longliners with a historic long-term dependency on the resource and the jig rollovers, and give the TAC to a sector with considerably less dependency on the resource. Of 125 vessels that qualify for the less than 60 ft (18.3 m) sector, only 32 have ever made a directed landing; in 2002, only 19 of them made a directed landing.

*Response:* The Council and NMFS' intent in allocating 2 percent of the total BSAI Pacific cod quota to jig gear in Amendment 64 (65 FR 51553, August 24, 2000) was to foster limited development of a small, low-impact coastal fishery. If the jig fleet were to harvest its entire quota, consistent with the intent of Amendment 64, the alleged "dependency" of the catcher processor fleet on the unused jig TAC would be moot.

Because the jig fleet has been unable to catch as much of its quota as expected or even as much as it had been

catching for the previous several years, the Council decided to reallocate unused jig quota to a similar small-vessel sector. A substantial percentage of the unused jig quota, however, likely will continue to be reallocated to the hook-and-line catcher processor sector in the last few months of the year due to the seasonal allocations; the small boat sector is unlikely to be able to use quota later in the year. Hence, this action represents a compromise in which the interests of each sector with a stake in the outcome were taken into consideration.

The RIR analyzed the change in the amount of TAC that the affected sectors would receive as a result of the change in rollover provisions. According to the analysis, since the implementation of Amendment 64, cod quota allocated from the jig sector has accounted for about 3.3 percent of the hook-and-line catcher processors' total catch and 0.5 percent of the pot sector's total catch. If unharvested jig gear quota is reallocated to the small catcher vessel sector, the RIR estimates the maximum annual potential loss from the hook-and-line sector at 3.7 percent of their catch, and 0.9 percent from the pot sector. This additional quota would be more than twice the amount of quota the small catcher vessel sector has received under its 1.4 percent allocation under Amendment 64. This estimate of reduced catch for the hook-and-line catcher-processors assumes that the small catcher vessel sector can harvest all of the unused TAC from the jig sector, which averaged 3,671 mt during 1995–2001. However, that does not take into account the effect of the seasonal quotas implemented under the final rule, under which the entire 40 percent allocation for the last four-month period, and perhaps some of the second four-month period reallocation, will most likely be reallocated to the catcher-processors because the small catcher vessels will not be able to use it; in the last four-month period, weather conditions likely would preempt the small boat fleet from operating. Furthermore, as of September 1, when the Pacific cod B season for pot catcher vessels greater than or equal to 60 ft (18.3 m) opens, small pot catcher vessels would be fishing, along with the larger catcher vessels, from the general pot catcher vessel allocation, which is 15 percent of the fixed gear TAC.

*Comment 7:* The proposed reallocation of unused jig gear TAC is consistent with the Council's intent to develop economic stability for the small boat fleet in coastal communities that service that fleet, as demonstrated by establishing a special jig quota.

However, the realities of markets, safety, weather and technology have supported little growth in the jig gear sector. Small pot gear boats and hook-and-line gear boats support the same coastal communities that the jig quota was intended to benefit, with similar employment characteristics, harvest rates, discard performance, bycatch performance, coastal community ties and technology limitations. All of these smaller vessels support shore-based processors and the community of Dutch Harbor, and many of the same people working on small pot boats also work on the small jig vessels. The small boat fleet is more likely to employ Alaskan crew members who live in coastal communities and will spend dollars in those communities.

The Council's rollover requirement is consistent with the original intent of the allocation to the jig sector, which was to develop economic stability for the small boat fleet in Alaska's coastal communities. The economic well being of the less than 60 ft (18.3 m) LOA hook-and-line and pot vessels is also important to Alaska's coastal communities, and the rollover provisions in Amendment 77 provide a fair allocation to those sectors.

*Response:* NMFS agrees that the Council's intent in allotting 2 percent of the Pacific cod quota to the jig fleet was to provide additional fishing opportunities for relatively small vessels and benefit the coastal communities where they are based. This action modifies the direction of the reallocation of unused jig quota, consistent with the Council's original intent to provide support for the small boat fleet.

*Comment 8:* In adopting Amendment 77, the Council created a well-structured compromise to distribute the unused portion of the jig sector's Pacific cod allocation between catcher vessels less than 60 ft (18.3 m) LOA and the hook-and-line catcher/processor fleet. Under the proposed requirements, vessels less than 60 ft (18.3 m) LOA will have the opportunity to harvest the unused jig gear allocation in the first eight months of the year. These small boats have limited fishing opportunities in the last four months due to weather and other factors, so a significant portion of the unused jig quota will be made available to the hook-and-line catcher/processor fleet during these months.

*Response:* See response to Comment 7.

*Comment 9:* The effect of this Council action is very minor in terms of the freezer longliner sector, less than 2 percent of their annual catch, but the

benefit to the less than 60 ft (18.3 m) LOA fixed gear sector is of huge significance in providing enough quota for a viable fishery. This reallocation is supported in the draft EA and has the support of many small boat fishermen.

*Response:* NMFS notes this position.

*Comment 10:* The 2-percent jig quota was not designed to benefit all small vessels. Instead, it was meant to provide an entry-level opportunity for jig fishermen only; rollovers were to go to freezer-longliners, as originally negotiated.

*Response:* Regardless of prior negotiation among industry representatives, Council action on Amendment 77 recommended a change to the regulations governing the reallocation of unharvested jig gear TAC. The Council's recommended change has been approved by NMFS. The effect of this change is to provide increased potential benefits from unused jig gear TAC to small catcher vessels. Catcher processor vessels, however, may still enjoy some of the benefit from this reallocated jig TAC to the extent that small catcher vessels are not able to harvest all of it.

*Comment 11:* Any increase to the allocation to the less than 60 ft (18.3 m) sector should occur with all gear groups under consideration and not just fixed gear. NMFS needs to continue current allocations as a means of maintaining stability for this fully utilized resource.

*Response:* This action was not intended to reconsider the allocations among the trawl, fixed gear, and jig gear sectors of the BSAI Pacific cod fishery. Amendment 77 does not change the overall Pacific cod allocations that were established in Amendment 46, nor does it change the allocations to the hook-and-line catcher processor sector, hook-and-line catcher vessel sector, or combined pot gear sectors established in Amendment 64. The only changes are a further split between the two pot gear sectors, and a change in the reallocation of unused jig gear TAC during a fishing year. NMFS does not agree that a decision about the reallocation of this relatively small amount of TAC must reopen the question of all allocations for Pacific cod in the BSAI. Amendment 64 contained a sunset provision partly so that fixed gear allocation issues could be revisited. The EA/RIR prepared for this action supports the contention that any of the options for reallocation of unused jig gear considered by the Council would maintain the desired stability.

*Comment 12:* When Amendment 67 was adopted, the Council exempted catcher vessels less than 60 ft (18.3 m) LOA from the requirement of having made recent landings to qualify for

License Limitation Program (LLP) licenses, so that about 130 vessels in this category qualified under the LLP. Amendment 64 allocated 1.4 percent of BSAI Pacific cod fixed gear TAC to small catcher vessels. At the time, the fact that 130 LLP-licensed vessels were eligible to participate, but could harvest only a very small percentage of the BSAI Pacific cod TAC, was identified as a problem that would present challenges at a later date.

*Response:* The Council's reallocation of unharvested jig gear Pacific cod is partly an effort to provide an enhanced opportunity to vessels qualified to fish, but which have little quota to fish for.

*Comment 13:* There is a limit on new boats able to enter the small boat fixed gear fishery for cod, so no new open access derby has been created.

*Response:* Some vessels qualified to fish under the LLP may enter the fishery because of this action, which was designed partly to give the small vessel fleet enhanced opportunities to harvest cod during the months of the year when it is most preferable for small boats in the BSAI. However, any new "derby" or race-for-fish resulting from the expanded opportunity provided by rolled over jig gear quota would be limited by the limited access program, as well as the fact that the amount of fish in question is relatively small (see response to Comment 6).

*Comment 14:* The proposed change disrupts and destabilizes the fishery prior to the completion of comprehensive rationalization.

*Response:* Please see the responses to Comments 7 and 13.

*Comment 15:* Although the Council's decision was sensible, behind-the-scenes lobbying by one sector might succeed in overturning it at the NMFS level; small vessel owners cannot afford lobbyists and lawyers.

*Response:* The notice and comment provisions of the Magnuson-Stevens Act and the Administrative Procedure Act provide everyone an equal opportunity to submit oral or written comments during the decisionmaking process. NMFS considers all comments submitted and believes that all interested parties have had ample opportunity during the Council meetings and during the rulemaking process to make their views known and considered. The decision is based on the record.

#### *Comments on Potential Impacts to Steller Sea Lions*

*Comment 16:* The proposed jig rollover regulations should consider cumulative impacts and should be examined in conjunction with similar

proposed actions that could potentially move harvest from offshore into nearshore areas in the context of cumulative effects on Steller sea lions. These include Gulf of Alaska rationalization and State of Alaska 2004 Board of Fisheries (BOF) proposals. BOF Proposal 177 would have the largest potential negative impacts for Steller sea lions. Proposal 177 would allocate 10 to 15 percent of the BSAI federal Pacific cod TAC to a new state waters fishery to be taken only by pot, jig, and hand troll gear.

The possibility also exists of creating a pollock fishery at Adak, or a rockfish test fishery in the Gulf of Alaska. No formal analysis of potential cumulative impacts has occurred.

*Response:* NMFS is required by NEPA to analyze cumulative effects, and such an analysis is in the EA at Section 2.4. Such an analysis should consider actions that have occurred and actions that have not yet been taken, but have a high probability of occurring. In correspondence with the State of Alaska to develop a response to this comment, NMFS has learned that although several proposals have been made which would give the State management of part of the BSAI TAC of Pacific cod in State waters (the fraction of the TAC and the specific area involved vary among the proposals), due to budgetary constraints and to other priority items on the State Board of Fish agenda, it is unlikely that the board will be reviewing or considering any of those proposals at any time in the foreseeable future.

The other actions mentioned are similarly speculative, and likely would require new statutory authority. Both the GOA Rationalization plan and the proposed rockfish test fishery would occur in the Gulf of Alaska rather than in the BSAI. If and when any of these actions are proposed in the form of concrete actions, the analyses for those actions will consider potential cumulative impacts on Steller sea lions.

*Comment 17:* In regards to the 2001 Biological Opinion and its 2003 supplement, the proposed jig rollover regulations pose more risk to Steller sea lions than the status quo jig rollover provisions which assign the unused quota to the hook-and-line catcher processor sector, which fishes further from shore. It would be prudent of NMFS to examine the potential redistribution of harvest to near shore areas particularly in light of the cumulative effects of pending similar actions.

This action would reallocate Pacific cod from a predominantly offshore fishery (hook-and-line catcher processors) to a nearshore fishery (small

catcher vessels) that has a high probability of increasing harvest in critical habitat, particularly inside of 10 nautical miles (nm); and of increasing harvest inside 3–10 nm by the pot gear fishery.

*Response:* In developing the proposed rule, NMFS conducted an informal consultation consistent with section 7 of the Endangered Species Act. This consultation determined that the catch of Pacific cod would likely increase inside Steller sea lion critical habitat during the spring and summer months. However, this increase would be relatively small and would remain within the overall goal of distributing the Pacific cod TAC by season.

Additionally, that catch would likely go to fixed gear fisheries (pot and hook-and-line) which are likely to have less impacts on the prey field for Steller sea lions than trawl gear (see the 2001 Biological Opinion for more information). The conclusion of the informal consultation is that the reallocation of unharvested jig gear quota is not likely to adversely affect the western distinct population segment of Steller sea lions, or their critical habitat.

In response to comments concerning Steller sea lions submitted on the proposed rule, NMFS enhanced the EA to clarify further the reasons for the conclusion of the informal consultation. Section 4.2.1 of the EA contains a detailed explanation of this issue.

*Comment 18:* Statements were added to the EA, after the Council took action on Amendment 77, in regards to Steller sea lions that appear to be contradictory and inconsistent with the 2001 Biological Opinion and its 2003 supplement. This is "revisionary history." The statements need to be amended. The proposed rule did not contain a discussion of Steller sea lions impacts. The proposed rule should address the potential impacts of the proposed rollover provisions on Steller sea lions. NMFS should correct the statement that vessels using pot gear are exempt from Steller sea lions measures because the rate of harvest is sufficiently slower than other gear types to be less of a factor: Pots are not exempt from NMFS' Steller sea lions protection measures. NMFS has concluded that they have little evidence to indicate which gear type is more or less likely to locally deplete prey. The hook-and-line harvest is less concentrated than the pot harvest. There is no correlation between vessel size and local depletion. The EA supplies erroneous reasoning why the pot catcher vessels are exempt from the A and B season Pacific cod apportionments. The EA says the pot exemption is because of lower harvest

rates, but actually the exemption was due to the small magnitude of the allocation and the difficulty of splitting the allocation into an A and B season for that sector.

*Response:* NMFS has made some corrections in the EA. Revisions to draft analytical documents during the process of Council and Secretarial decisionmaking are normal. The EA provided to the Council is a draft for Council review. A draft EA is subsequently released for public review and comment, with the proposed rule. Public comments on draft EAs are welcomed by the Council and NMFS and improve the information and analysis that ultimately inform the decision. NMFS appreciates and welcomes public comments on all draft NEPA documents.

*Comment 19:* The commentator supports the final rule and notes that the small catcher vessel fleet is still under the same rules for Steller sea lions as all other vessels.

*Response:* NMFS agrees that the small catcher vessel fleet must abide by the rules for Steller sea lions, as do all other vessels. However, catcher vessels less than 60 ft (18.3 m) LOA are not subject to the seasonal restrictions that apply to the fixed gear vessels greater than or equal to 60 ft (18.3 m) LOA.

#### *Comments on Habitat and Bycatch Issues*

*Comment 20:* The reallocation of unharvested jig gear quota is consistent with national standard 9: "Minimize bycatch, and to the extent bycatch cannot be avoided, minimize the mortality of such bycatch."

The jig fishery is a very low bycatch and low impact fishery, and therefore no bycatch standard or caps are required for the jig fishery. Similarly, no bycatch allocation has been made for pot vessels less than 60 ft (18.3 m) LOA because of the low bycatch. Reallocating unused jig quota to vessels less than 60 ft (18.3 m) will utilize the quota by giving it to the most comparable fishery in terms of low bycatch and low impact. This will maintain the highest compliance with national standard 9. Fishing on pot catcher vessels less than 60 ft (18.3 m) is done in an environmentally sensitive manner.

The EA/RIR/IRFA showed no detrimental or serious adverse impacts from the action.

*Response:* NMFS agrees that pot gear is a relatively selective gear type, and observer coverage on larger pot boats indicates relatively low incidental catch rates for pot gear for most species.

#### *Comment on Commercial Fisheries*

*Comment 21:* Amendment 77 is wrong. NMFS should stop overfishing, should cut the total catch by 50 percent, and should read the Pew Report. The amendment should stop ALL of the fishing proposed by North Pacific Fishery Management Council, which is composed of commercial fishermen primarily interested in making money from fish stocks which are continually declining.

*Response:* None of the groundfish fisheries managed by NMFS off Alaska are overfished, nor does NMFS allow overfishing to occur in the North Pacific groundfish fisheries. Each year, NMFS specifies overfishing levels for each fishery under its management. For the Pacific cod fishery in the BSAI, which is the fishery of concern in Amendment 77, NMFS specified an overfishing level of 324,000 mt in 2003, but the TAC for 2003 was set at only 207,500 mt. National standard 1 of the Magnuson-Stevens Act requires that conservation and management measures prevent overfishing while achieving optimum yield from each fishery. The management of this fishery is fully in compliance with national standard 1 and all other provisions of the Magnuson-Stevens Act.

#### **Changes From the Proposed Rule to the Final Rule**

One change has been made from the proposed rule to the final rule. In § 679.20, paragraph (a)(7)(ii)(B), has been modified to clarify that if small catcher vessels that receive unused jig gear quota are unable to harvest any of that quota, NMFS may reallocate the unharvested amount as a directed fishing allowance to catcher/processor vessels using hook-and-line gear. The modification does not implement any change of policy from that presented for comment in the proposed rule but instead clarifies the sequence of reallocations of unused jig gear quota.

#### **Classification**

The Administrator, Alaska Region, NMFS, determined that this final rule is necessary for the management of the BSAI groundfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This action has been determined to be not significant under Executive Order 12866. No new reporting, recordkeeping, or compliance requirements are imposed by this final rule.

NMFS has prepared a FRFA, which analyzes the impacts of Amendment 77 on small entities. A copy of this analysis

is available from NMFS. The Initial Regulatory Flexibility Analysis (IRFA) is contained in section 4.3 of the EA/RIR/IRFA, and is also available from NMFS. A summary of the findings from the FRFA follows:

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action is contained in the preamble to the proposed rule.

No comments were received specifically on the IRFA. However, several comments were received on the economic impacts of Amendment 77 on different sectors of the industry. For a summary of the comments received, refer to the section above titled "Comments and Responses."

The directly regulated entities for Amendment 77 will be those vessels participating in the Pacific cod fixed gear fishery in the BSAI. A total of about 87 small entities will be directly regulated by this action: 55 pot vessels greater than or equal to 60 ft (18.3 m) LOA; 9 hook-and-line vessels greater than or equal to 60 ft (18.3 m) LOA; and 18 hook-and-line catcher vessels less than 60 ft (18.3 m) LOA.

This regulation does not impose new recordkeeping or reporting requirements on the regulated small entities.

NMFS considered four alternatives and adopted elements of its Alternatives 2 and 4. Because these alternatives often involved tradeoffs between different groups, and because all the groups affected included small entities, some groups of small entities might have experienced smaller adverse impacts under some of these alternatives, but these would have been accompanied by increased adverse impacts for other groups of small entities.

Alternative 1 would allow the fleet allocations to expire. This would increase competition among gear groups for shares of the Pacific cod. This increased competition was expected to reduce the profitability of the fishery in general. Moreover, the heightened competition under this alternative was expected to impose a disproportionate burden on the smallest entities.

Alternative 3 would modify the current BSAI Pacific cod allocations. Under one option, the allocation for catcher vessels less than 60 ft (18.3 m) LOA would either be removed, or would change from 1.4 percent to 0.3 percent, to conform to actual historical catch history from 1995 to 1999. Under another option, the allocation for small catcher vessels would be retained at 1.4 percent, but subtracted proportionally from other sectors and not just from hook-and-line catcher processors as occurred under Amendment 64. The

resulting BSAI Pacific cod fixed gear split would translate to slightly different allocations among the fixed gear sectors, depending on which option was chosen. All vessel groups include small entities, and therefore, any difference between the allocation under Alternative 2 and the allocations under any of the options for Alternative 3 would adversely affect some groups with small entities and would have positive effects on other small entities. Thus, none of the Alternative 3 options has less of an adverse impact on small entities than Alternative 2. The option under Alternative 3 to eliminate or decrease the allocation to hook-and-line and pot catcher vessels under 60 feet would adversely impact a group of operations that are relatively small compared to those in other affected sectors.

NMFS adopted a suboption under Alternative 2, its preferred alternative, to reapportion the jig gear allocation (2 percent of the overall BSAI Pacific cod TAC) by four-month period, and reallocate unused jig quota to small catcher vessels. This option may have an adverse impact on the vessels in the hook-and-line catcher-processor and pot sectors which had formerly received 95 percent and 5 percent, respectively, of any jig rollovers. NMFS adopted this provision to benefit a group of small entities that were similar in socioeconomic profile to the jig fleet for which the quota was originally intended, and to benefit small coastal communities. The suboption chosen was added at the Council meeting and was a compromise. The last four-month period reallocation is unlikely to be used by catcher vessels less than 60 ft (18.3 m) LOA, and is likely to be reallocated to the hook-and-line catcher-processors which previously received any unused jig gear allocations.

Alternative 4, which was part of the preferred alternative along with Alternative 2, splits the BSAI Pacific cod pot allocation between the pot catcher vessel sector and the pot catcher-processor sector on the basis of relative harvests in the years 1998–2001. NMFS chose Alternative 4, Option 3. Three other options would have allocated Pacific cod among the two pot gear sectors in different ways. Each of these other options would have had an adverse impact on one or the other of the two groups.

Further analysis of the impacts of the alternatives on small entities is contained in the FRFA.

#### Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group

of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. This final rule serves as the small entity compliance guide. This action does not require any additional compliance from small entities. Copies of this final rule are available from NMFS (see **ADDRESSES**) and at the following website: <http://www.fakr.noaa.gov/>

#### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: November 24, 2003.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Services.*

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

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

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

**Authority:** Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31, 113 Stat. 57; 16 U.S.C. 1540(f).

■ 2. In § 679.20, paragraphs (a)(7)(i)(C), (a)(7)(ii)(B), (a)(7)(ii)(C), and (a)(7)(iii)(A) are revised to read as follows:

#### § 679.20 General limitations.

\* \* \* \* \*

(a) \* \* \*

(7) \* \* \*

(i) \* \* \*

(C) *Allocations among vessels using hook-and-line or pot gear.* (1) The Regional Administrator annually will estimate the amount of Pacific cod taken as incidental catch in directed fisheries for groundfish other than Pacific cod by vessels using hook-and-line or pot gear and deduct that amount from the portion of Pacific cod TAC annually allocated to hook-and-line or pot gear under paragraph (a)(7)(i)(A) of this section. The remainder will be further allocated as directed fishing allowances as follows:

(i) 80.0 percent to catcher/processor vessels using hook-and-line gear;

(ii) 0.3 percent to catcher vessels using hook-and-line gear;

(iii) 3.3 percent to catcher/processor vessels using pot gear;

(iv) 15.0 percent to catcher vessels using pot gear; and

(v) 1.4 percent to catcher vessels less than 60 ft (18.3 m) LOA that use either hook-and-line or pot gear.

(2) Harvest of Pacific cod by catcher vessels less than 60 ft (18.3 m) LOA using pot gear:

(i) Will accrue against the 15 percent specified in paragraph (a)(7)(i)(C)(1)(iv) of this section when the directed fishery for Pacific cod by catcher vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear is open.

(ii) Will accrue against the 1.4 percent specified in paragraph (a)(7)(i)(C)(1)(v) of this section when the directed fishery for Pacific cod by catcher vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear is closed.

\* \* \* \* \*

(ii) \* \* \*

(B) *Reallocation among vessels using hook-and-line or pot gear.* If, during a fishing year, the Regional Administrator determines that catcher vessels using hook-and-line gear or vessels less than 60 ft (18.3 m) LOA using hook-and-line or pot gear will not be able to harvest the directed fishing allowance of Pacific cod allocated to those vessels under paragraphs (a)(7)(i)(C)(1)(ii), (a)(7)(i)(C)(1)(iv), or (a)(7)(ii)(C)(1) of this section, NMFS may reallocate the projected unused amount of Pacific cod as a directed fishing allowance to catcher/processor vessels using hook-and-line gear through notification in the **Federal Register**.

(C) *Reallocation among vessels using trawl or non-trawl gear.* If, during a fishing year, the Regional Administrator determines that vessels using trawl gear, hook-and-line gear, pot gear or jig gear will not be able to harvest the entire amount of Pacific cod in the BSAI allocated to those vessels under paragraphs (a)(7)(i)(A), (a)(7)(i)(B) or (a)(7)(i)(C) of this section, NMFS will reallocate the projected unused amount of Pacific cod to vessels harvesting Pacific cod using the other gear type(s) through notification in the **Federal Register**, subject to the provisions below:

(1) *Reallocation of TAC specified for jig gear.* The Regional Administrator will reallocate any projected unused portion of a seasonal allowance of Pacific cod for vessels using jig gear under paragraphs (a)(7)(i)(A) and (a)(7)(iii)(A) of this section to catcher vessels less than 60 ft (18.3 m) LOA using hook-and-line or pot gear.

(2) *Reallocation of TAC specified for trawl gear.* The Regional Administrator will reallocate any projected unharvested amounts of Pacific cod

TAC allocated to trawl gear under paragraph (a)(7)(i) of this section: 95 percent to catcher/processor vessels using hook-and-line gear, 0.9 percent to catcher/processor vessels using pot gear,

and 4.1 percent to catcher vessels using pot gear.

\* \* \* \* \*

(iii) \* \* \*

(A) *Seasonal apportionment and gear allocations.* The BSAI Pacific cod gear allocations and apportionments by seasons, as specified in § 679.23 (e)(5), are as follows:

Gear Type	A season	B season	C season
(1) trawl .....	60 percent	20 percent	20 percent
(i) trawl CV .....	70 percent	10 percent	20 percent
(ii) trawl CP .....	50 percent	30 percent	20 percent
(2) hook-and-line processors, hook-and-line ≥60 ft (18.3 m)LOA, and non-CDQ pot vessels ≥60 ft (18.3 m) LOA .....	60 percent	40 percent	
(3) jig vessels .....	40 percent	20 percent	40 percent
(4) all other nontrawl vessels .....	no seasonal apportionment	no seasonal apportionment	no seasonal apportionment

\* \* \* \* \*

■ 3. In § 679.23, paragraph (e)(5)(i) introductory text is revised, and paragraph (e)(5)(iv) is added, to read as follows:

**§ 679.23 Seasons.**

\* \* \* \* \*

(e) \* \* \*

(5) \* \* \*

(i) *Hook-and-line gear.* Subject to other provisions of this part, directed fishing for CDQ and non-CDQ Pacific

cod with vessels equal to or greater than 60 ft (18.3 m) LOA using hook-and-line gear is authorized only during the following two seasons:

\* \* \* \* \*

(iv) *Jig gear.* Subject to other provisions of this part, directed fishing for CDQ and non-CDQ Pacific cod with jig gear is authorized only during the following three seasons:

(A) *A season.* From 0001 hours, A.l.t., January 1 through 1200 hours, A.l.t., April 30;

(B) *B season.* From 1200 hours, A.l.t., April 30 through 1200 hours, A.l.t., August 31;

(C) *C season.* From 1200 hours, A.l.t., August 31 through 2400 hours, A.l.t., December 31.

\* \* \* \* \*

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