

**ADDRESSES:** Written comments may be sent to Christopher Rogers, Acting Chief, NMFS Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910; or faxed to 301-713-1917. Comments will not be accepted if submitted via e-mail or the Internet. Copies of the Biological Opinion that requires this action may also be obtained from this address.

**FOR FURTHER INFORMATION CONTACT:** Tyson Kade or Karyl Brewster-Geisz at 301-713-2347 or via fax at 301-713-1917.

**SUPPLEMENTARY INFORMATION:** On June 8, 2001, (revised June 14, 2001) NMFS published a Biological Opinion (BiOp) that found that the Atlantic pelagic longline fishery is jeopardizing the continued existence of loggerhead and leatherback sea turtles. The BiOp estimated that a 55-percent reduction in bycatch mortality from the pelagic longline fishery is necessary to allow for the recovery of these two species. To achieve the necessary reduction, the BiOp required the implementation of a reasonable and prudent alternative that was composed of several elements. On July 13, 2001, NMFS issued an emergency rule (66 FR 36711) that closed the northeast distant statistical reporting area, required specific gear deployment modifications, and required that the safe handling and release guidelines for sea turtles caught in pelagic longline gear be posted aboard all vessels permitted for HMS fisheries. The emergency rule is effective until January 9, 2002.

On August 31, 2001, the June 14, 2001 BiOp was further revised with respect to a term and condition of the reasonable and prudent measure identified in the accompanying incidental take statement to limit the requirement to post the sea turtle handling and release guidelines to vessels using longline gear. The safe handling guidelines are specific to longline interactions and would not be applicable to vessels using other gear such as seines or gillnets. The costs to the government of printing and distributing guidelines to non-longline HMS vessels, and the burden on such vessels of posting those guidelines is not justified. Accordingly, NMFS is revising the regulation to apply only to permitted vessels having pelagic and bottom longline on board.

**Classification**

The Assistant Administrator for Fisheries (AA), under 5 U.S.C. 553(b)(3), finds that providing prior notice and opportunity for public comment on this revision would be contrary to the public interest. Without this revision, HMS

vessels that do not display the sea turtle safe handling and release guidelines would be in violation of the regulations. While NMFS has supplied sea turtle safe handling and release guidelines to all longline vessels, NMFS has not supplied, and does not intend to supply, the guidelines to non-longline vessels. In order that non-longline vessels not be in technical violation, it is necessary to make this revision without prior notice and an opportunity for public comment. Because this rule relieves a restriction, under 5 U.S.C. 553(d)(1) it is not subject to a 30-day delay in effective date. The requirement for longline vessels to post the guidelines remains effective from September 15, 2001 through January 9, 2002.

Because prior notice and opportunity for public comment are not required for this final rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are inapplicable.

This action is not significant under the meaning of Executive Order 12866.

**List of Subjects in 50 CFR Part 635**

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: September 18, 2001.

**William T. Hogarth,**  
Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

**PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**

1. The authority citation for part 635 continues to read as follows:

**Authority:** 16 U.S.C. 971 et seq. and 16 U.S.C. 1801 et seq.

2. In § 635.21, paragraph (a)(3) is suspended and a new paragraph (a)(4) is added to read as follows:

**§ 635.21 Gear operation and deployment restrictions.**

\* \* \* \* \*

(a) \* \* \*

(4) Effective September 15, 2001, through January 9, 2002, operators of all vessels that have pelagic or bottom longline gear on board and that have been issued, or required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must post inside the wheelhouse the sea turtle

handling and release guidelines provided by NMFS.

\* \* \* \* \*

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**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 010228052-1211-02; I.D. 010301D]

**RIN 0648-AL95**

**Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule that implements Amendment 60 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, Amendment 58 to the FMP for Groundfish of the Gulf of Alaska, and Amendment 10 to the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and the Aleutian Islands. This rule is necessary to implement changes to the License Limitation Program (LLP) made by these amendments and are intended to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the three FMPs.

**DATES:** Effective October 24, 2001, except for § 679.4(k)(3)(i) and (k)(3)(iv)(A), and § 679.7(i)(9) which will be effective January 1, 2002.

**ADDRESSES:** Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) and the final regulatory flexibility analysis (FRFA) are available from the Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel, or hand pick-up at Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801.

**FOR FURTHER INFORMATION CONTACT:** John Lepore, 907-586-7228.

**SUPPLEMENTARY INFORMATION:**

**Background**

The North Pacific Fishery Management Council (Council)

recommended, and NMFS approved, the LLP to address concerns of excess capital and capacity in the groundfish and crab fisheries in and off Alaska. The LLP is one stage of a multi-staged process to reduce capacity and capital in the affected fisheries. The LLP replaced the Vessel Moratorium Program (VMP), a program implemented by NMFS to impose a temporary moratorium on the entry of new capacity in the groundfish and crab fisheries in and off Alaska and to help define the class of entities that would be eligible for licenses under the LLP. The VMP expired on December 31, 1999, and fishing under the LLP began on January 1, 2000. More information on the background and development of the LLP can be found in the preamble to the final rule implementing the LLP at 63 FR 52642 (October 1, 1998).

In October 1998, the Council recommended several changes to the LLP through Amendments 60, 58, and 10. A notice of availability for these amendments was published January 17, 2001 (66 FR 3976), which initiated a 60-day public comment period on the approval of these amendments by NMFS. All public comments received during that period were in favor of approval. NMFS approved Amendments 60, 58, and 10 on April 18, 2001. The following section outlines the changes made to the LLP by Amendments 60, 58, and 10. More information regarding these changes, including the Council's rationale for recommending them, can be found in the preamble to the proposed rule for this action at 66 FR 17397 (March 30, 2001).

#### Changes to the LLP Qualifying Criteria

1. A recent participation requirement has been added to the eligibility for a crab species license.

The qualification criteria to receive a permanent crab species license has been changed to require participation during the period beginning January 1, 1996, through February 7, 1998. Under the original provisions of the LLP, a person only needed to demonstrate that documented harvests were made from a qualifying vessel during two periods for a crab species license. These two periods are the general qualification period (GQP), which began January 1, 1988, through June 27, 1992, and the endorsement qualification period (EQP), which varied according to the particular area/species endorsements included on the license.

A third period, the recent participation period (RPP), has been added to the documented harvest requirements for crab. Under the RPP, a person must demonstrate that at least

one documented harvest of any amount of crab species was made from a qualifying vessel during the period beginning January 1, 1996, through February 7, 1998. The additional eligibility requirement of the RPP is designed to reduce the number of crab species licenses that might otherwise be issued to persons who have been inactive in the crab fishery since 1995. If permanent licenses were issued to inactive fishermen, they could transfer those licenses to persons who would become active in the fishery. This result would be contrary to the purpose of the LLP because it would likely increase fishing effort above the current levels in the crab fisheries.

Several exemptions from the RPP requirement are provided based on public testimony before the Council and in consideration of the impacts the RPP could have on small fishing operations. This final rule in response to public comments adds a hardship exemption (unavoidable circumstances), similar to that provided for the EQP. The following exemptions are included in this final rule.

*Exemption 1:* A person who only qualifies for a Norton Sound red king crab and Norton Sound blue king crab endorsement does not have to meet the documented harvest requirements of the RPP.

*Exemption 2:* A person whose qualifying vessel is less than 60 ft (18.3 m) length overall (LOA) does not have to meet the documented harvest requirements of the RPP.

*Exemption 3:* A person whose qualifying vessel was unable to meet the documented harvest requirements of the RPP because it was lost or destroyed, but from which a documented harvest of crab species was made during the period beginning after the vessel was lost or destroyed through January 1, 2000, does not have to meet the documented harvest requirements of the RPP.

*Exemption 4:* A person who can demonstrate that his or her vessel made a documented harvest of crab species during the period beginning January 1, 1998, through February 7, 1998, and who obtains the fishing history of a vessel that meets the GQP and the EQP, or enters into a contract to obtain the fishing history of a vessel that meets the GQP and the EQP, by 8:36 am Pacific standard time on October 10, 1998, does not have to meet the requirement of having a complete fishing history on the same qualifying vessel for qualification.

*Exemption 5:* A person who can demonstrate that he or she had a specific intent to participate in the crab fisheries during the RPP but was

prevented from participating by circumstances that were unavoidable, unique, and unforeseen and unforeseeable, does not need to meet the documented harvest requirements of the RPP.

2. A transfer of groundfish LLP licenses that was earned from a vessel that did not have a Federal Fisheries Permit (FFP) is restricted.

This final rule restricts the transfer of a groundfish LLP license that was earned based on documented harvests from a vessel that did not have an FFP during the period beginning January 1, 1988, through October 8, 1998. Under this transfer restriction, the groundfish LLP license and the vessel from which the license was earned must be transferred together. In other words, this type of groundfish LLP license cannot be transferred separately and used on a vessel other than the original qualifying vessel.

This transfer restriction has two exceptions. First, if the fishing history of a vessel that did not have an FFP was transferred before February 7, 1998, the qualifying vessel did not have to accompany the license. However, subsequent transfers will require the license to be "coupled" with the existing vessel (i.e., the license cannot be transferred separately from the vessel named on the license). Second, a vessel that is subject to this provision but that is lost or destroyed can be replaced under the general vessel replacement provisions of the LLP.

Concerns of excess capacity in the affected fisheries influenced the Council to recommend this transfer restriction. This transfer restriction is based on the fact that an FFP was required for any vessel that participated in a Federal groundfish fishery off Alaska. If a vessel participated in a Federal groundfish fishery off Alaska without an FFP, it did so illegally. If a vessel did not participate in a Federal groundfish fishery off Alaska, its qualifying documented harvests must have occurred in waters of the State of Alaska (State waters) or other waters shoreward of the exclusive economic zone (EEZ) off Alaska. Groundfish fisheries in State waters or other waters shoreward of the EEZ off Alaska will not be managed under the LLP; therefore, the fishing behavior of these operations should not be affected.

3. A gear designation is added to groundfish licenses.

Adding a gear designation to groundfish licenses is intended to prevent movement between the trawl sector and the non-trawl sector. This action will effectively limit participation within a gear sector's

fishery to those who are historically dependent on that fishery. Under this provision, a license will be issued a "trawl," "non-trawl," or "trawl/non-trawl" gear designation based on gear participation before June 17, 1995. If, for example, a person used trawl gear and longline gear before June 17, 1995, the license issued to that person will have a trawl/non-trawl gear designation. This designation will mean that the license holder could use trawl gear and non-trawl gear. However, if a person used only trawl gear before June 17, 1995, the license issued to that person will have a trawl gear designation. This designation will mean that the license holder can only use trawl gear.

The general rule on gear designations has two exceptions. First, a person can exercise a one-time option to switch gear designations if that person used a different gear type between June 18, 1995, and February 7, 1998, than was used previously. For example, a person used only trawl gear before June 17, 1995, but in 1997 used pot gear to catch Pacific cod. The use of this non-trawl gear type in 1997 would allow the person to exercise a one-time option to change the gear designation from trawl gear to non-trawl gear. A person cannot qualify for a trawl/non-trawl gear designation by use of this exception.

Second, a person can request a gear designation change based on a significant financial investment. To qualify under the second exception a person will have to (1) demonstrate that a significant financial investment was made in converting a vessel and/or purchasing fishing gear on or before February 7, 1998, and (2) demonstrate that a documented harvest was made from the qualifying vessel with the new gear type on or before December 31, 1998. What is meant by a significant financial investment was defined by the Council based on industry testimony during the development of this action. Industry testimony indicated that spending at least \$100,000 toward vessel conversion and/or gear to change from a non-trawl to a trawl fishery, or having acquired groundline, hooks or pots, and hauling equipment to change from a trawl to a non-trawl fishery, should be considered sufficient to justify a gear designation change.

4. The Community Development Quota (CDQ) vessel exemption is limited to a specific time period.

An exemption to LLP licensing requirements for specific CDQ vessels is included in the LLP regulations at 50 CFR 679.4(k)(2)(iv). This exemption was intended to facilitate the ability of CDQ organizations to enter and prosecute groundfish fisheries with newly

constructed vessels that did not qualify under the LLP. However, concerns over excess capacity in the groundfish fisheries, and recognition that CDQ organizations are integrating into the existing fishing industry at a reasonable pace, induced the Council to recommend a limit to this exemption. The Council recommended that the exemption be limited to vessels that met the CDQ vessel exemption criteria between November 18, 1992, and October 9, 1998, the latter of which is the date the Council recommended the limitation. Allowing CDQ vessels to qualify for this exemption through that date would protect the investment-backed expectations of any CDQ organization that decided to use this exemption before the Council's decision to limit the provision.

5. The use of a groundfish or crab LLP license is limited to the vessel named on the license.

Under this final rule, effective January 1, 2002, a groundfish or crab LLP license may only be used on the vessel named on the license. This restriction was recommended by the Council to address concerns about the movement of license holders among vessels contributing to excess capacity in the fisheries. Currently, an LLP license is not directly linked to a particular vessel and a license holder is able to use any vessel to fish for license limitation groundfish or crab species if that vessel complies with vessel length restrictions.

For licenses issued after the effective date of this final rule, NMFS will specify the name of the vessel on the license. A license holder will be authorized to use only the vessel designated on the license. A change to the vessel designated on the license will require agency action and will count toward the limit of one transfer per license in each calendar year.

6. Limited processing ability is authorized for a person who holds a license with a catcher vessel designation.

Currently, LLP licenses are separated into two distinct processing designations: A catcher vessel designation, which means that the license holder cannot process fish; and a catcher/processor designation, which means that the license holder can catch and process fish on the same vessel. The Council, through public testimony, was presented with two reasons why some relief should be granted under these strict category distinctions.

First, public testimony indicated that an opportunity should be provided for entry into processing. Second, public testimony indicated that if limited processing opportunities were allowed,

some catcher vessels would be able to take advantage of "niche markets." Niche markets are small, specialized markets, such as a local grocery store or restaurant. Fishermen can sell directly to these markets and provide a specialty product to consumers in an expedited manner. For these reasons, the Council recommended a limited processing exception. This exception will allow an LLP license holder with a catcher vessel designation to process one metric ton of round fish per day if it is harvested on a vessel that is less than 60 ft (18.3 m) LOA, and if the license holder complies with other requirements (e.g., proper designation on the FFP and recordkeeping and reporting requirements for processing).

#### *Other Changes Included in This Rule and Small Entities Compliance Guide*

Several portions of the LLP regulations are revised to eliminate the word "State" when referring to waters shoreward of the EEZ off Alaska. The word "State" was eliminated because including it excluded from the LLP several areas shoreward of the EEZ off Alaska that are not State waters. These areas include the waters adjacent to the Metlakatla Indian Reservation and Federal areas reserved off Kodiak Island and Nunivak Island.

A prohibition is added specifying that a person cannot use a vessel, or allow a vessel to be used, to fish for license limitation groundfish or crab species, other than the vessel named on the license. This prohibition gives effect to the requirement in this action that a specific vessel must be named on the license.

The format for the eligibility criteria for the LLP is changed from regulatory text to several tables. The table format is intended to make the eligibility requirements more accessible and understandable and serves as a Small Entities Compliance Guide to the LLP. It does not change any of the substantive requirements for eligibility. Instructions for using the tables to determine eligibility are as follows: (a) For each table, begin at the cell at column 1, row 1. This cell contains the beginning of a statement that, when completed, indicates whether you are eligible; (b) scan the various cells (row 2 through last row) in column 1 to find the second portion of the statement that began in the cell at column 1, row 1 and that applies to your particular case; and (c) once the appropriate row has been located, alternate between that row and row 1 sequentially through the columns to complete the statement.

For example, to determine whether you are eligible for a Bering Sea area

endorsement for your groundfish license, begin at the cell at column 1, row 1 in the table located at 50 CFR 679.4(k)(4)(ii). This cell contains the statement "A groundfish license will be assigned . . ." Next, locate the cell in column 1 that corresponds with the endorsement for which you would like to determine eligibility. This can be found at column 1, row 3. Next, alternate between row 3 and row 1 sequentially through the columns to determine your eligibility. The completed statement would appear as follows: *A groundfish license will be assigned . . .* (from column 1, row 1) *a Bering Sea area endorsement* (from column 1, row 3) *if . . .* (from column 2, row 1) *at least one documented harvest of any amount of license limitation groundfish was made* (from column 2, row 3) *during the period . . .* (from column 3, row 1) *beginning January 1, 1992, through June 17, 1995* (from column 3, row 3) *in . . .* (from column 4, row 1) *the Bering Sea Subarea or in waters shoreward of that area* (from column 4, row 3) *from a vessel in vessel length category . . .* (from column 5, row 1) *"A", "B", or "C"* (from column 5, row 3) *and that meets the requirement for a . . .* (from column 6, row 1) *catcher/processor designation or a catcher vessel designation* (from column 6, row 3). Although the completed sentence is long, it provides sufficient information to determine eligibility. The same process can be used for other eligibility determinations.

#### Changes in the Final Rule

Several changes were made to this final rule: First, the proposed period for the lost vessel exemption will not be limited to January 1, 1996, through February 7, 1998. Instead, no period is specified. To qualify for this exemption, a person must (1) satisfy the documented harvest requirements of the GQP and the EQP; (2) demonstrate that the vessel used to meet the documented harvest requirements of the GQP and the EQP was lost or destroyed; and (3) document a harvest of any amount of crab species after the vessel was lost or destroyed but on or before January 1, 2000.

Second, the lost vessel exemption is revised so that a person other than the owner of the vessel can benefit from the exemption. This revision would allow any person who owns the fishing history of the lost or destroyed vessel to use that fishing history toward eligibility.

Third, a hardship exemption (unavoidable circumstances) has been added for the RPP. Adding an unavoidable circumstances provision to

the RPP is consistent with the original provisions of the LLP (i.e., the EQP has an unavoidable circumstances provision). Also, adding an unavoidable circumstances provision will allow persons to qualify for a license who are dependent on the crab fishery but who failed to meet the documented harvest requirements of the RPP because of circumstances beyond their control.

Finally, the proposed revision of the definition of "Person" is withdrawn. That revision would not have made a substantive change to the definition of "Person."

#### Response to Public Comments

Eight sets of comments were received on Amendments 60, 58, and 10, and the proposed rule implementing those amendments. Six sets of comments urged the approval of Amendment 10 and do not justify a specific response. The other two sets of comments addressed specific provisions of the proposed rule and are summarized below.

*Comment 1:* The lost or destroyed vessel exemption was unnecessarily narrowed. First, the time period was made concurrent with the RPP period (from January 1, 1996, through February 7, 1998). This would preclude a person from using this exemption if a vessel was lost or destroyed after it was used to meet the documented harvest requirements of the EQP but before January 1, 1996. Second, only the vessel owner could benefit from this provision, rather than any person who obtained the fishing history of the lost or destroyed vessel. This is inconsistent with the Council's policy to recognize the written transfer or retention of a fishing history. Also, NMFS should clarify that the transfer or retention of a vessel's fishing history will be analyzed for substance rather than formal terminology when it is reviewed for eligibility.

*Response:* NMFS agrees. The final rule is revised to extend the time period for the lost or destroyed vessel exemption and to allow someone other than the vessel owner to use the exemption if the fishing history of that vessel was properly transferred.

The preamble to the proposed rule implementing Amendments 60, 58, and 10 (66 FR 17397, March 30, 2001) addressed how NMFS would treat the transfer or retention of a fishing history and should be reviewed for details on fishing history transfer evaluations. NMFS intends to review the substance of transfers and retentions to respect the investment-backed expectations of persons and to preserve the overall policies of the LLP.

*Comment 2:* The RPP should have an unavoidable circumstances provision similar to the one provided for the EQP. Not providing an unavoidable circumstances provision for the RPP may unfairly preclude a person from eligibility and is inconsistent with the overall LLP.

*Response:* NMFS agrees. The final rule is revised to include an unavoidable circumstances provision for the RPP that is similar to the one provided for the EQP.

#### License Re-issuance

NMFS will notify each LLP license holder of the status of his or her license based on the changes made by Amendments 60, 58, and 10. A license holder will have 60 days to respond to NMFS regarding the status of his or her license and to designate the vessel which is to be named on the license, if allowed that option. After the 60 days has expired and a determination has been issued by NMFS, license holders will have the right to appeal to the Office of Administrative Appeals, Alaska Region, NMFS.

#### Classification

The Council prepared an environmental assessment for FMP Amendments 60, 58, and 10 that discusses the impact on the environment as a result of this rule. The analysis indicates that the individual impacts of the changes, and the cumulative impacts of all the changes, could have a negligible affect on the quality of the human environment. Most of the changes in this rule either limit participants, or their participation, as compared to the status quo. Allowing limited processing by catcher vessels is not expected to impact the fisheries stock, the physical environment, or non-target species. A copy of the environmental assessment is available from NMFS (see ADDRESSES).

An FRFA was prepared that describes the impact this final rule would have on small entities. The analysis concludes that most persons affected by the actions are small entities, given that their expected annual gross revenues are less than \$3 million, or are assumed to be small entities because of insufficient annual receipts data. Nevertheless, NMFS finds that the small entities involved in this analysis are small businesses (fishing operations). Impacts to small organizations and small governmental jurisdictions are negligible. An estimated 447 groundfish license recipients could be affected by limiting the transfer of licenses earned on vessels that never held a Federal fisheries permit. Each of these 447 are

considered small entities because of insufficient annual receipts data.

All of the estimated 2,435 groundfish license recipients could be affected by adding gear endorsements to the license. Of these 2,435 license recipients, 2,272 are catcher vessels and 163 are catcher/processors. All 2,272 catcher vessels are assumed to be small entities because of insufficient annual receipts data. Of the 163 catcher/processors, some may be small entities for purposes of the RFA; however, due to an absence of ownership, partnership, and affiliation information it is not possible to report the number of each category with certainty. The estimated 2,435 groundfish license recipients are owners of catcher vessels and catcher-processor vessels that participated in the groundfish fisheries between January 1, 1988, and June 17, 1995.

All six CDQ organizations, which are considered small entities, have the potential to be affected by the rescission of the CDQ vessel exemption, although none is expected to be impacted. NMFS expects this result because no CDQ organizations, to date, have sought to use this exemption, new management and affiliation relationships have developed with CDQ organizations that make the exemption unnecessary, and the Council provided a "grandfather" provision that protects any existing CDQ organization from being disadvantaged by this action.

An estimated 93 crab license recipients could be affected by the addition of a recent participation requirement for eligibility for a crab LLP license. Of these 93 crab license recipients, all are assumed to be small entities because of insufficient annual receipts data. The addition of a recent participation period (January 1, 1996, through February 7, 1998), which requires at least one documented harvest of crab during that time period, will reduce the number of crab license recipients from approximately 365 to 272.

An estimated 1,902 license recipients could be affected by allowing limited processing by catcher vessels under 60 feet. Of these 1,902 license recipients, all are assumed to be small entities because of insufficient annual receipts data.

The Council considered and adopted several measures to reduce the impact of the final rule. As originally proposed, limiting the transfer of licenses earned on vessels that never held a Federal Fisheries Permit would have disqualified license recipients who did not have a Federal Fisheries Permit for their vessels. After reviewing the impact disqualification would have on license

recipients, primarily small entities, the Council recommended that licenses with limited transferability be issued to such recipients. The Council recommended that a provision be added to allow a license recipient to designate a gear type different from the one for which that license recipient qualified if certain criteria were met. In addition, the Council reviewed several alternatives for adding a recent participation period for crab license eligibility, including alternatives that would have required more participation than one documented harvest during the period from January 1, 1996, through February 7, 1998. The Council concluded that the measures outlined in the final rule provided the most benefits in meeting the goals of the LLP program while imposing the least harm to affected license recipients.

NMFS received eight sets of comments regarding this action. Six sets of comments urged approval of this action. Two sets of comments addressed specific aspects of the action and are summarized below.

One comment indicated that the time period established for lost or destroyed vessels was too short and would preclude persons who depended on the fishery from using the exemption. NMFS agreed with this comment and extended the time period to include all time between original eligibility time period under the LLP and January 1, 2000.

One comment indicated that the recent participation period for crab licenses did not have an unavoidable circumstances provision and that one should be added. The comment suggested a provision similar to the one provided for the endorsement qualification period under the original provisions of the LLP. NMFS agreed with this comment and added an unavoidable circumstances provision. This addition will make the recent participation period more consistent with the other provisions of the LLP and will provide a greater opportunity for persons who may be dependent on the fishery to qualify for a license.

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

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

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: September 13, 2001.

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

For reasons set out in the preamble, 50 CFR part 679 is amended to read 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:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 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); and Sec. 209, Pub. L. 106-554.

2. In § 679.4, paragraphs (k)(2)(iv), (k)(3)(i), (k)(4)(i) through (k)(4)(v), (k)(5), (k)(5)(i) introductory text, (k)(5)(ii), and (k)(6)(iv)(D) are revised and paragraphs (k)(3)(ii)(D), (k)(3)(iv), (k)(5)(iii) through (k)(5)(vi), and (k)(7)(ix) are added to read as follows:

#### **§ 679.4 Permits.**

\* \* \* \* \*

(k) \* \* \*

(2) \* \* \*

(iv) A catcher vessel or catcher/processor vessel that does not exceed 125 ft (38.1 m) LOA, and during the period after November 18, 1992, through October 9, 1998, was specifically constructed for and used exclusively in accordance with a CDP approved by NMFS, and is designed and equipped to meet specific needs that are described in the CDP, is exempted from the requirement to have a LLP groundfish license to conduct directed fishing for license limitation groundfish in the GOA and in the BSAI area and a crab species license to fish for crab species in the Bering Sea and Aleutian Islands Area.

(3) *Vessel and gear designations and vessel length categories—(i) General.* A license may be used only on a vessel named on the license, a vessel that complies with the vessel designation and gear designation specified on the license, and a vessel that has an LOA less than or equal to the MLOA specified on the license.

(ii) \* \* \*

(D) *Limited processing by catcher vessels.* Up to 1 mt of round weight equivalent of license limitation groundfish or crab species may be processed per day on a vessel less than or equal to 60 ft (18.3 m) LOA that is authorized to fish with an LLP license with a catcher vessel designation.

\* \* \* \* \*

(iv) *Gear designations for groundfish licenses—(A) General.* A vessel may only

use gear consistent with the gear designation on the LLP license authorizing the use of that vessel to fish for license limitation groundfish or crab species.

(B) *Trawl/non-trawl*. A license will be assigned a trawl/non-trawl gear designation if trawl and non-trawl gear were used to harvest LLP species from the qualifying vessel during the period beginning January 1, 1988, through June 17, 1995.

(C) *Trawl*. A license will be assigned a trawl gear designation if only trawl gear was used to harvest LLP species from the qualifying vessel during the period beginning January 1, 1988, through June 17, 1995.

(D) *Non-trawl*. A license will be assigned a non-trawl gear designation if only non-trawl gear was used to harvest LLP species from the qualifying vessel

during the period beginning January 1, 1988, through June 17, 1995.

(E) *Changing a gear designation*. (1) An applicant may request a change of gear designation based on gear used from the vessel during the period beginning June 18, 1995, through February 7, 1998. Such a change would be permanent and may only be used for a change from trawl to non-trawl or from non-trawl to trawl.

(2) An applicant may request a change of gear designation based on a significant financial investment in converting a vessel or purchasing fishing gear on or before February 7, 1998, and making a documented harvest with that gear on or before December 31, 1998. Such a change would be permanent and may only be used for a change from trawl to non-trawl or from non-trawl to trawl.

(F) *Definitions of non-trawl gear and significant financial investment*. (1) For purposes of paragraph (k)(3)(iv) of this section, non-trawl gear means any legal gear, other than trawl, used to harvest license limitation groundfish.

(2) For purposes of paragraph (k)(3)(iv)(E)(2) of this section, "significant financial investment" means having spent at least \$100,000 toward vessel conversion and/or gear to change to trawl gear from non-trawl gear, or having acquired groundline, hooks, pots, jig machines, or hauling equipment to change to non-trawl gear from trawl gear.

(4) \* \* \*

(i) *General qualification periods (GQP)*. This table provides the GQP documented harvest requirements for LLP groundfish licenses:

A GROUND FISH LICENSE WILL BE ASSIGNED...	IF THE REQUIREMENTS FOUND IN THE TABLE AT § 679.4(k)(4)(ii) ARE MET FOR THE AREA ENDORSEMENT AND AT LEAST ONE DOCUMENTED HARVEST OF LICENSE LIMITATION GROUND FISH WAS CAUGHT AND RETAINED IN...	DURING THE PERIOD...
(A) One or more area endorsements in the table at § 679.4(k)(4)(ii)(A) or (B)	the BSAI or waters shoreward of the BSAI	(1) Beginning January 1, 1988, through June 27, 1992; or (2) Beginning January 1, 1988, through December 31, 1994, provided that the harvest was of license limitation groundfish using pot or jig gear from a vessel that was less than 60 ft (18.3 m) LOA; or (3) Beginning January 1, 1988, through June 17, 1995, provided that, during the period beginning January 1, 1988, through February 9, 1992, a documented harvest of crab species was made from the vessel, and, during the period beginning February 10, 1992, through December 11, 1994, a documented harvest of groundfish species, except sablefish landed using fixed gear, was made from the vessel in the GOA or the BSAI using trawl or longline gear.
(B) One or more area endorsements in the table at § 679.4(k)(4)(ii)(C) through (O)	the GOA or in waters shoreward of the GOA	(1) Beginning January 1, 1988, through June 27, 1992; or (2) Beginning January 1, 1988, through December 31, 1994, provided that the harvest was of license limitation groundfish using pot or jig gear from a vessel that was less than 60 ft (18.3 m) LOA; or (3) Beginning January 1, 1988, through June 17, 1995, provided that, during the period beginning January 1, 1988, through February 9, 1992, a documented harvest of crab species was made from the vessel, and, during the period beginning February 10, 1992, through December 11, 1994, a documented harvest landing of groundfish species, except sablefish landed using fixed gear, was made from the vessel in the GOA or the BSAI using trawl or longline gear.

(ii) *Endorsement qualification periods (EQP)*. This table provides the documented harvest requirements for

LLP groundfish license area endorsements:

A GROUND FISH LICENSE WILL BE ASSIGNED...	IF...	DURING THE PERIOD...	IN...	FROM A VESSEL IN VESSEL LENGTH CATEGORY...	AND THAT MEETS THE REQUIREMENTS FOR A...
(A) An Aleutian Island area endorsement	at least one documented harvest of any amount of license limitation groundfish was made.	beginning January 1, 1992, through June 17, 1995.	the Aleutian Islands Subarea or in waters shoreward of that area.	"A", "B", or "C"	catcher/ processor designation or a catcher vessel designation.
(B) A Bering Sea area endorsement	at least one documented harvest of any amount of license limitation groundfish was made.	beginning January 1, 1992, through June 17, 1995.	the Bering Sea Subarea or in waters shoreward of that area.	"A", "B", or "C"	catcher/ processor designation or a catcher vessel designation.
(C) A Western Gulf area endorsement	at least one documented harvest of any amount of license limitation groundfish was made in each of any two calendar years.	beginning January 1, 1992, through June 17, 1995.	the Western Area of the Gulf of Alaska or in waters shoreward of that area.	"A"	catcher/ processor designation or a catcher vessel designation; or
(D) A Western Gulf area endorsement	at least one documented harvest of any amount of license limitation groundfish was made.	beginning January 1, 1992, through June 17, 1995.	the Western Area of the Gulf of Alaska or in waters shoreward of that area.	"B"	catcher vessel designation; or
(E) A Western Gulf area endorsement	at least one documented harvest of any amount of license limitation groundfish was made in each of any two calendar years.	beginning January 1, 1992, through June 17, 1995.	the Western Area of the Gulf of Alaska or in waters shoreward of that area.	"B"	catcher/processor vessel designation; or
(F) A Western Gulf area endorsement	at least four documented harvest of any amount of license limitation groundfish were made.	beginning January 1, 1995, through June 17, 1995.	the Western Area of the Gulf of Alaska or in waters shoreward of that area.	"B"	catcher/processor vessel designation; or
(G) A Western Gulf area endorsement	at least one documented harvest of any amount of license limitation groundfish was made.	beginning January 1, 1992, through June 17, 1995.	the Western Area of the Gulf of Alaska or in waters shoreward of that area.	"C"	catcher/processor designation or a catcher vessel designation.
(H) A Central Gulf area endorsement	at least one documented harvest of any amount of license limitation groundfish was made in each of any two calendar years.	beginning January 1, 1992, through June 17, 1995.	the Central area of the Gulf of Alaska or in waters shoreward of that area, or in the West Yakutat District or in waters shoreward of that district.	"A"	catcher/processor designation or a catcher vessel designation; or
(I) A Central Gulf area endorsement	at least one documented harvest of any amount of license limitation groundfish was made in each of any two calendar years.	beginning January 1, 1992, through June 17, 1995.	the Central area of the Gulf of Alaska or in waters shoreward of that area, or in the West Yakutat District or in waters shoreward of that district.	"B"	catcher/processor designation or a catcher vessel designation; or

A GROUND FISH LICENSE WILL BE ASSIGNED...	IF...	DURING THE PERIOD...	IN...	FROM A VESSEL IN VESSEL LENGTH CATEGORY...	AND THAT MEETS THE REQUIREMENTS FOR A...
(J) A Central Gulf area endorsement	at least four documented harvest of any amount of license limitation groundfish were made.	beginning January 1, 1995, through June 17, 1995.	the Central area of the Gulf of Alaska or in waters shoreward of that area, or in the West Yakutat District or in waters shoreward of that district.	"B"	catcher/processor designation or a catcher vessel designation; or
(K) A Central Gulf area endorsement	at least one documented harvest of any amount of license limitation groundfish was made.	beginning January 1, 1992, through June 17, 1995.	the Central area of the Gulf of Alaska or in waters shoreward of that area, or in the West Yakutat District or in waters shoreward of that district.	"C"	catcher/processor designation or a catcher vessel designation.
(L) A Southeast Outside area endorsement	at least one documented harvest of any amount of license limitation groundfish was made in each of any two calendar years.	beginning January 1, 1992, through June 17, 1995.	in the Southeast Outside District or in waters shoreward of that district.	"A"	catcher/processor designation or a catcher vessel designation; or
(M) A Southeast Outside area endorsement	at least one documented harvest of any amount of license limitation groundfish was made in each of any two calendar years.	beginning January 1, 1992, through June 17, 1995.	in the Southeast Outside District or in waters shoreward of that district.	"B"	catcher/processor designation or a catcher vessel designation; or
(N) A Southeast Outside area endorsement	at least four documented harvest of any amount of license limitation groundfish were made.	beginning January 1, 1995, through June 17, 1995.	in the Southeast Outside District or in waters shoreward of that district.	"B"	catcher/processor designation or a catcher vessel designation; or
(O) A Southeast Outside area endorsement	at least one documented harvest of any amount of license limitation groundfish was made.	beginning January 1, 1992, through June 17, 1995.	in the Southeast Outside District or in waters shoreward of that district.	"C"	catcher/processor designation or a catcher vessel designation.

(iii) An eligible applicant that is issued a groundfish license based on a vessel's qualifications in the table at paragraphs (k)(4)(i)(A)(2) or (k)(4)(i)(B)(2) of this section must choose only one area endorsement for that groundfish license even if documented harvests qualifies the eligible applicant for more than one area endorsement.

(iv) Notwithstanding the provisions in paragraph (k)(4)(i) of this section, NMFS will issue a groundfish license with the appropriate area endorsements to an eligible applicant whose vessel meets the requirements in the table at paragraph (k)(4)(i)(A) of this section, and the requirements in the table at any

of the paragraphs (k)(4)(ii)(C) through (O) of this section, except:

(A) From whose vessel no documented harvests were made in the GOA or waters shoreward of the GOA during the period beginning January 1, 1988, through June 27, 1992, and

(B) From whose vessel no documented harvests were made in the BSAI or waters shoreward of the BSAI during the period beginning January 1, 1992, through June 17, 1995.

(v) Notwithstanding the provisions in paragraph (k)(4)(i) of this section, a groundfish license with the appropriate area endorsements will be issued to an eligible applicant whose vessel meets the requirements in the tables at

paragraphs (k)(4)(i) and (k)(4)(ii) and (A) or (B) of this section, except:

(A) From whose vessel no documented harvests were made in the BSAI or waters shoreward of the BSAI during the period beginning January 1, 1988, through June 27, 1992, and

(B) From whose vessel no documented harvests were made in the GOA or waters shoreward of the GOA during the period beginning January 1, 1992, through June 17, 1995.

(5) *Qualification for a crab species license.* A crab species license will be issued to an eligible applicant who owned a vessel that meets the criteria in paragraphs (k)(5)(i), (k)(5)(ii), and (k)(5)(iii) of this section, except that



vessels are exempt from the requirements in paragraph (k)(5)(i) of this section for area/species endorsements at paragraphs (A) and (G) in the table at paragraph (k)(5)(ii) of this section.

(i) *General qualification period (GQP)*. To qualify for one or more of the area/species endorsements in the table at paragraph (k)(5)(ii) of this section, the requirements of paragraph (k)(5)(iii) of this section must be met and: \* \* \*

(ii) *Area/species endorsements*. This table provides the documented harvest requirements for LLP crab license area/species endorsements:

\* \* \* \* \*

A CRAB SPECIES LICENSE WILL BE ASSIGNED...	IF...	DURING THE PERIOD...	IN...
(A) A Pribilof red king and Pribilof blue king area/species endorsement	at least one documented harvest of red king crab or blue king crab was made by a vessel	beginning January 1, 1993, through December 31, 1994.	the area described in the definition for a Pribilof red king and Pribilof blue king area/species endorsement at § 679.2.
(B) A Bering Sea and Aleutian Islands Area <i>C. opilio</i> and <i>C. bairdi</i> area/species endorsement	at least three documented harvests of <i>C. opilio</i> and <i>C. bairdi</i> were made by a vessel	beginning January 1, 1992, through December 31, 1994.	the area described in the definition for a Bering Sea and Aleutian Islands Area <i>C. opilio</i> and <i>C. bairdi</i> area/species endorsement at § 679.2.
(C) A St. Matthew blue king area/species endorsement	at least one documented harvest of red king crab or blue king crab was made by a vessel	beginning January 1, 1992, through December 31, 1994.	the area described in the definition for a St. Matthew blue king area/species endorsement at § 679.2.
(D) An Aleutian Islands brown king area/species endorsement	at least three documented harvests of brown king crab were made by a vessel	beginning January 1, 1992, through December 31, 1994.	the area described in the definition for an Aleutian Islands brown king area/species endorsement at § 679.2.
(E) An Aleutian Islands red king area/species endorsement	at least one documented harvest of red king crab or blue king crab was made by a vessel	beginning January 1, 1992, through December 31, 1994.	the area described in the definition for an Aleutian Islands red king area/species endorsement at § 679.2.
(F) A Bristol Bay red king area/species endorsement	at least one documented harvest of red king crab or blue king crab was made by a vessel	beginning January 1, 1991, through December 31, 1994.	the area described in the definition for a Bristol Bay red king area/species endorsement at § 679.2.
(G) A Norton Sound red king and blue king area/species endorsement	at least one documented harvest of red king crab or blue king crab was made by a vessel	beginning January 1, 1993, through December 31, 1994.	the area described in the definition for a Norton Sound red king and blue king area/species endorsement at § 679.2.

(iii) *Recent participation period (RPP)*. (A) A person must have made at least one documented harvest of any amount of crab species from a qualifying vessel during the period from January 1, 1996, through February 7, 1998, to qualify for one or more of the area/species endorsements specified at § 679.2.

(B) *Exceptions to the RPP*. A person does not need to meet the documented harvest requirements in paragraph (k)(5)(iii)(A) of this section if he or she deployed a vessel that met the documented harvest requirements in paragraph (k)(5)(i) of this section, if applicable, paragraph (k)(5)(ii) of this section, and:

(1) Only qualifies area/species endorsement at paragraph (G) in the table at paragraph (k)(5)(ii).

(2) Those documented harvests were made from a vessel that meets the requirements for vessel length category "C".

(3) The vessel used to meet the document harvest requirements in paragraphs (k) (5) (i) and (k) (5) (ii) of this section was lost or destroyed, and he or she made a documented harvest of crab species any time during the period

beginning after the vessel was lost or destroyed but before January 1, 2000.

(iv) *Exception to the complete fishing history earned on one vessel*. A person who can demonstrate that his or her vessel made a documented harvest of crab species during the period from January 1, 1998, through February 7, 1998, and who obtains the fishing history of a vessel that meets the documented harvest requirements of paragraphs (k)(5)(i) and (k)(5)(ii) of this section, or who entered into a contract to obtain the fishing history of a vessel that meets the documented harvest requirements of paragraphs (k)(5)(i) and (k)(5)(ii) of this section by 8:36 am Pacific standard time on October 10, 1998, is exempted from the requirement of having a complete fishing history earned on one vessel.

(v) A qualified person who owned a vessel on June 17, 1995, that met the requirements in paragraphs (k)(5)(i) and (ii) of this section, but whose vessel was unable to meet requirements of paragraph (k)(5)(iii) of this section because of unavoidable circumstances (i.e., the vessel was lost damaged, or otherwise unable to participate in the license limitation crab fisheries) may

receive a license if the qualified person is able to demonstrate that:

(A) The owner of the vessel at the time of the unavoidable circumstance held a specific intent to conduct fishing for license limitation crab species with that vessel during a specific time period in a specific area;

(B) The specific intent to conduct directed fishing for license limitation crab species was thwarted by a circumstance that was:

(1) Unavoidable;

(2) Unique to the owner of that vessel, or unique to that vessel; and

(3) Unforeseen and reasonably unforeseeable to the owner of the vessel;

(C) The circumstance that prevented the owner from conducting directed fishing for license limitation crab species actually occurred;

(D) Under the circumstances, the owner of the vessel took all reasonable steps to overcome the circumstances that prevented the owner from conducting directed fishing for license limitation crab species; and

(E) Any amount of license limitation crab species was harvested on the vessel after the vessel was prevented from participating but before January 1, 2000.

(vi) A groundfish license or crab species license may be used on a vessel that is named on the license, that complies with the vessel designation, and that does not exceed the MLOA on the license.

(6) \* \* \*

(iv) \* \* \*

(D) *Unavoidable circumstances.* If a person is claiming that unavoidable circumstances prevented him or her from meeting certain eligibility requirements for a license under paragraph (k) of this section, he or she must provide the information required in the particular paragraph of this section authorizing such a claim, and include valid evidence of the date the vessel was lost, damaged, or otherwise unable to participate in the fishery, and the date a documented harvest was made after the vessel was unable to participate in the fishery by the unavoidable circumstance.

\* \* \* \* \*

(7) \* \* \*

(ix) *Other transfer restrictions.* The transfer of a LLP license that was issued based on the documented harvests from a vessel that did not have an FFP during the period beginning January 1, 1988, through October 8, 1998, must be accompanied by the vessel from which the documented harvests were made or its replacement vessel, or if the LLP license and vessel were separated by transfer prior to February 7, 1998, then by the vessel that is currently being deployed by the license holder. The Regional Administrator will deny a transfer application that requests the transfer of a LLP license that was issued based on the documented harvests from a vessel that did not have an FFP during the period beginning January 1, 1988, through October 8, 1998, if the appropriate vessel is not being transferred as part of the same transaction. A license holder of an LLP license that was issued based on the documented harvests from a vessel that did not have an FFP during the period beginning January 1, 1988, through October 8, 1998, may replace the vessel from which the documented harvests were made with another vessel that meets the vessel designation and MLOA requirements specified on the LLP license if the original qualifying vessel is lost or destroyed.

\* \* \* \* \*

3. In § 679.7, paragraph (i)(6) is revised and paragraph (i)(9) is added to read as follows:

**§ 679.7 Prohibitions.**

(i) \* \* \*

(6) Use a vessel to fish for LLP groundfish or crab species, or allow a

vessel to be used to fish for LLP groundfish or crab species, that has an LOA that exceeds the MLOA specified on the license that authorizes fishing for LLP groundfish or crab species.

\* \* \* \* \*

(9) Use a vessel to fish for LLP groundfish or crab species, or allow a vessel to be used to fish for LLP groundfish or crab species, other than the vessel named on the license that authorizes fishing for LLP groundfish or crab species.

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**[Docket No. 010112013-1013-01; I.D. 091801A]**

**Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Central Aleutian District and Bering Sea Subarea of the Bering Sea and Aleutian Islands**

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

**ACTION:** Closure and notice of opening.

**SUMMARY:** NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2001 total allowable catch (TAC) of Atka mackerel. NMFS is also opening fishing with trawl gear in Steller sea lion critical habitat in the Central Aleutian District for species for which directed fisheries are open.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), September 18, 2001, until 2400 hrs, A.l.t., December 31, 2001.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP

appear at subpart H of 50 CFR part 600 and at 50 CFR part 679.

The 2001 Atka mackerel TAC in the Central Aleutian District of the BSAI is 31,080 metric tons (mt) as established by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001 and 66 FR 37167, July 17, 2001).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2001 Atka mackerel TAC in the Central Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 30,880 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance soon will be reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

On September 9, 2001, NMFS prohibited trawling within Steller sea lion critical habitat in the Central Aleutian District because the allowable harvest of Atka mackerel in the Steller Sea lion protection areas in the Central Aleutian District had been reached (66 FR 47418, September 12, 2001). Regulations at 679.22(a)(12)(iii)(C) authorize opening Steller sea lion critical habitat in the Central Aleutian District to fishing with trawl gear after NMFS closes Atka mackerel to directed fishing within that district. Therefore, NMFS is opening critical habitat in the Central Aleutian District to fishing with trawl gear for species open to directed fishing.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the 2001 Atka mackerel TAC in the Central Aleutian District of the BSAI constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the 2001 Atka mackerel TAC in the Central