

land catch in another area, may be required to accommodate NMFS certified observers on board to collect scientific data. An observer program will be considered only for circumstances where other data collection methods are deemed insufficient for management of the fishery. Any observer program will be implemented in accordance with § 660.517.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 010228052-1052-01; I.D. 010301D]

RIN 0648-AL95

#### Fisheries of the Exclusive Economic Zone Off Alaska; Amendments to Alaska Groundfish and Crab Fishery Management Plans to Revise the License Limitation Program

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

**ACTION:** Proposed rule.

**SUMMARY:** NMFS issues a proposed rule to implement 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 proposed rule would implement changes to the License Limitation Program (LLP) that would be made by these Amendments and is intended to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the affected FMPs.

**DATES:** Comments must be received by April 30, 2001.

**ADDRESSES:** Comments may be mailed to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801. Comments submitted via e-mail or the Internet will not be accepted.

Copies of the draft environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) are available from the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501-2252; telephone 907-271-2809.

**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 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 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 (63 FR 52642, October 1, 1998). The final rule establishing the application and transfer processes for the LLP was published August 6, 1999 (64 FR 42826). In October 1998, the Council recommended several changes to the LLP. These changes, which are embodied in Amendment 60 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (Amendment 60), Amendment 58 to the FMP for Groundfish of the Gulf of Alaska (Amendment 58), and Amendment 10 to the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands (Amendment 10), are outlined below.

##### Proposed Changes to the LLP Qualifying Criteria

A. Amendment 10 would add a recent participation requirement to the eligibility requirements for a crab species license.

The Council recommended that a recent participation requirement be added to the eligibility requirements for a crab species license. Under the current LLP, a person applying for a crab species license must demonstrate that documented harvests were made from a qualifying vessel during two periods, the general qualification period (GQP) and the endorsement qualification period (EQP). The current documented harvest requirements for the two periods are as follows.

GQP: One documented harvest of any amount of crab species during the period beginning January 1, 1988, through June 27, 1992, or, if a legal landing of moratorium groundfish species was made from a vessel during the period beginning January 1, 1988, through February 9, 1992, and a legal landing of moratorium crab species was made from that vessel during the period beginning February 10, 1992, through December 11, 1994, one documented harvest of any amount of crab species during the period beginning January 1, 1988, through December 31, 1994.

EQP: Documented harvests during the EQP must be of the same crab species and in the same area as the endorsement.

1. Bering Sea and Aleutian Islands Area *C. opilio* and *C. bairdi* (Tanner crab): Three documented harvests of any amount during the period beginning January 1, 1992, through December 31, 1994.

2. Aleutian Islands brown king crab: Three documented harvests of any amount during the period beginning January 1, 1992, through December 31, 1994.

3. Aleutian Islands red king crab: One documented harvest of any amount during the period beginning January 1, 1992, through December 31, 1994.

4. Bristol Bay red king crab: One documented harvest of any amount during the period beginning January 1, 1991, through December 31, 1994.

5. Pribilof red king crab and Pribilof blue king crab: One documented harvest of any amount during the period beginning January 1, 1993, through December 31, 1994.

6. St. Matthew blue king crab: One documented harvest of any amount during the period beginning January 1, 1992, through December 31, 1994.

7. Norton Sound red king crab and Norton Sound blue king crab: One documented harvest of any amount during the period beginning January 1, 1993, through December 31, 1994.

In accordance with Amendment 10, this proposed rule would add a third period, the recent participation period (RPP), to the documented harvest requirements for crab. Under the RPP, a person applying for a crab species license would have to demonstrate that one documented harvest of any amount of crab species was made from a qualifying vessel during the period extending from January 1, 1996, through February 7, 1998. The additional eligibility requirements of the RPP are proposed as a means of reducing the number of crab species licenses that might otherwise be issued to persons who have been inactive in the crab

fishery since 1995. Licenses given to such inactive fishermen could be transferred 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.

The Council recommended that exemptions from the requirements of the RPP be provided based on public testimony and in consideration of the impacts the RPP would have on small fishing operations. The following exemptions are proposed:

*Exemption 1:* A person who only qualifies for a Norton Sound red king crab and Norton Sound blue king crab endorsement would 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) LOA would 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 during the RPP period, but which made a documented harvest of crab species during the period beginning after the vessel was lost or destroyed through January 1, 2000, would 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 PST on October 10, 1998, would not have to meet the requirement of having a complete fishing history for qualification.

B. Amendments 60 and 58 would impose a transfer restriction on a groundfish LLP license earned from a vessel that did not have a Federal Fisheries Permit (FFP).

This proposed rule would implement Amendments 60 and 58 by imposing a transfer restriction on a groundfish LLP license that was earned from a vessel that did not have an FFP prior to October 9, 1998. Under this transfer restriction, the groundfish LLP license and the vessel from which the license was earned would have to be transferred together. In other words, this type of groundfish LLP license could not be transferred separately from the vessel, but could only be used by, and would

have to be onboard, the original qualifying vessel.

Two exceptions to this transfer restriction are proposed. First, if the transfer of the fishing history of a vessel that did not have an FFP occurred before February 7, 1998, transfer of the qualifying vessel would not have to accompany transfer of the license; the license could be transferred separately from the vessel, but future transfers of the license would have to be accompanied by transfer of the "new" vessel. Second, a vessel that is subject to this provision but that is lost or destroyed could be replaced under the general vessel replacement provisions of the LLP.

Concerns of excess capacity in the affected fisheries again influenced the Council to make these recommendations. In considering the impacts these recommendations would have on license recipients, the Council justified the recommendations based on the fact that an FFP was required for any vessel that participated in a Federal groundfish fishery off Alaska. A vessel that participated in a Federal groundfish fishery off Alaska without an FFP 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 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 operations of these vessels would not be affected. Hence, the Council did not consider it a hardship to the license recipient to directly link the transfer of a license to the vessel.

C. Amendments 60 and 58 would add gear designations to the groundfish license.

The Council recommended that a gear designation be added to a groundfish license. The gear designation is intended to prevent movement between the trawl sector and the non-trawl sector, and thus more effectively limit participation within a gear sector's fishery to those more historically dependent on the fishery. Under this provision, a license would 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 would have a trawl/non-trawl gear designation. This designation would mean that the license holder could use trawl and non-trawl gear. However, if a person only used trawl gear prior to June 17, 1995,

the license issued to that person would have a trawl gear designation. This designation would mean that the license holder could only use trawl gear.

Two exceptions to the general rule on gear designations are proposed to account for recent activity. Under the first exception, a person could 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. 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 could not qualify for a trawl/non-trawl gear designation by use of this exception.

Under the second exception, a person could request a gear designation change based on a significant financial investment. To qualify under the second exception a person would 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. A significant financial investment is defined on the basis of industry testimony before the Council as having spent at least \$100,000 toward vessel conversion and/or gear to change from a non-trawl to a trawl gear designation, or having acquired groundline, hooks or pots, and hauling equipment for prosecuting a fixed gear fishery to change from a trawl to a non-trawl gear designation.

D. Amendments 60 and 58 would limit the Community Development Quota (CDQ) vessel exemption.

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, similar to the one provided in the VMP, 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 acknowledgment that CDQ organizations are integrating into the existing fishing industry at a reasonable pace, induced the Council to recommend limiting the exemption. Further support for limiting this provision came from public testimony that CDQ organizations did not use this exemption under the VMP. 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 date the Council recommended the limitation. Allowing CDQ vessels to qualify for this exemption through October 9, 1998, would ensure that the investment-backed expectations of any CDQ organization, which may have decided to use this exemption prior to the Council's decision to limit the provision, are protected.

E. Amendments 60 and 58 would allow limited processing by a person who holds a license with a catcher vessel designation.

The LLP currently separates licenses into two distinct processing designations: a catcher vessel designation, under which no fish can be processed, and a catcher/processor designation, under which fish can be processed. 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 exploit "niche markets," which are small, specialized markets, such as a local grocery store or a restaurant to whom a fisherman sells frozen products directly. For these reasons, the Council recommended a limited processing exception. For the purpose of this exception, this proposed rule would define limited processing as 1 metric ton (mt) of round fish per day harvested on a vessel that is less than 60 ft (18.3 m) LOA under a groundfish license with a catcher vessel designation.

F. Amendments 60, 58, and 10 would add the vessel name to groundfish and crab species licenses.

This proposed rule would require that the name of the vessel be specified on an LLP license for groundfish and crab. This change was recommended as a regulatory amendment by the Council to address concerns about the movement of license holders among vessels contributing to excess capacity in the fisheries. Under current LLP regulations, a license issued under the LLP is not directly linked to a particular vessel. A license holder is able to use any vessel to fish for license limitation groundfish or crab species if that vessel complies with length restrictions. This ability may contribute to excess capacity by allowing a license holder to use a second vessel to fish while the first

vessel was in port, or by allowing a license holder to alternate between vessels in different fisheries in different geographical locations. In both cases, a license holder could engage in uninterrupted fishing because breaks in fishing activity for unloading, vessel repairs, or running time could be eliminated through the use of another vessel.

To further refine the goal of the LLP to reduce excess capacity, the Council recommended that a specific vessel be designated on a groundfish or crab species license. A license holder would be authorized to use only the vessel designated on the license. A change to the vessel designated on the license would require agency action and would be counted toward the limit of one license transfer per calendar year.

#### **Clarification of a Complete Fishing History for License Eligibility**

The LLP is designed to place an upper limit on the amount of capitalization that can occur in the groundfish and crab fisheries. In doing so, the LLP also identifies the field of participants and provides stability during the development of a more comprehensive solution for conservation and management of the affected fisheries. One of the design features that assists in providing stability is the provision that allows the fishing history of a vessel to be transferred prior to license issuance. This provision protects the investment-backed expectations of a person who purchased a fishing history to meet the eligibility requirements for a license under the LLP. Although the LLP provides for these transfers, eligibility for a license under the LLP cannot currently occur by "piecing together" the fishing histories from two or more vessels, except under a specific provision of the LLP explained here.

The following explains what is meant by a complete fishing history for license eligibility and how NMFS intends to implement the Council's intent. The fishing history of a vessel that can be used as the basis for eligibility for a license under the LLP remains with the vessel until either (1) June 17, 1995, when it vests with the vessel owner, or (2) it is separated by the express terms of a written contract that clearly and unambiguously indicates that the fishing history is transferred or retained. The Council chose June 17, 1995, as the determining date because it coincides with the date the Council recommended the LLP.

Until June 17, 1995, the fishing history remains with the vessel unless separated by a contract. This contract could transfer the fishing history to a

person other than the vessel owner. However, the fishing history would not qualify the receiver of it for a license unless that fishing history meets all the requirements for eligibility. Alternatively, this contract could retain the fishing history in the person who is selling his or her vessel before June 17, 1995. Again, this fishing history would not qualify the retainer of it for a license unless the fishing history meets all the requirements for eligibility. In either case, the contract has separated the fishing history from the vessel.

On June 17, 1995, the fishing history of the vessel, unless already separated by contract, vests in the vessel owner. After June 17, 1995, the vessel owner can transfer that fishing history by contract. A vessel sold after June 17, 1995, does not have a fishing history to use as the basis for license eligibility because its fishing history has vested in the owner and would have to be obtained through the express terms of a written contract.

A partial fishing history (i.e., a fishing history that does not meet all of the eligibility criteria) generally cannot be joined with another partial fishing history to form a complete one. However, there is one exception, which applies to eligibility for a crab license. The Council provided that a person who can demonstrate that a documented harvest of crab species was made from his or her vessel during the period beginning January 1, 1998, through February 7, 1998, can join that fishing history with another fishing history from a vessel that meets the GQP and the EQP, as long as the fishing history that meets the GQP and the EQP was acquired, or a contract to acquire that fishing history was entered into, by 8:36 am PST on October 10, 1998. Other than this specific exception, the fishing history of one vessel cannot be joined with the fishing history of another vessel to achieve eligibility.

In addition, a person cannot retain the partial fishing history of one vessel, move to another vessel, and continue the fishing history. The Council specifically provided for vessels that were lost or destroyed before a fishing history was completed. One provision was described above as Exception 3. The other provision, called the "unavoidable circumstances provision," also provides a means for achieving eligibility although the fishing history of a vessel is not complete. The details of the unavoidable circumstances provision were published in the LLP final rule (63 FR 52642, October 1, 1998).

In summary, a person must have a complete fishing history, which must

have been created on a single vessel, with two exceptions. The first exception is for crab licenses. A person can combine a documented harvest of crab species that occurred during the period beginning January 1, 1998, through February 7, 1998, with the fishing history of another vessel that meets the requirements of the GQP and the EQP (see Exception 4 above). The second exception applies to lost or destroyed vessels. Two different provisions implement this exception, the unavoidable circumstances provision for missing documented harvests during the EQP, and Exception 3 for missing documented harvests of crab species during the RPP.

### Application Process

Should the Secretary of Commerce approve Amendments 60, 58, and 10, once a final rule has been published NMFS' Restricted Access Management Program (RAM) would implement the application process as follows. Each LLP license holder would be notified of the status of his or her license. License holders for whom RAM has no evidence of qualifications under the crab recent participation qualifications would be informed that they have 60 days to establish such qualifications or lose their license. RAM would request those license holders who qualify to designate the vessel upon which the license is to be used. License holders whose qualifying harvests were made outside of the EEZ (e.g., in Alaska State fisheries) would have their licenses re-endorsed with the name of a qualifying vessel inseparable from the license. As necessary, RAM would add gear designations to the licenses.

License holders would have 60 days to respond to RAM's determinations and would have the right to appeal a determination to the NMFS/Alaska Region Office of Administrative Appeals.

### Other Changes Included in This Proposed Rule

The definition of "Person" would be changed so that it applies generally to all fishery management programs, including the LLP. This change does not affect the meaning of the definition.

Several paragraphs of the LLP regulations would be revised to eliminate the word "State" when referring to waters shoreward of the EEZ off Alaska. The word "State" was eliminated because including that word 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 new prohibition would be 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 Council's recommendation to require that a specific vessel must be named on the license.

The eligibility requirements for a Western Gulf area endorsement for vessel length category "A" in § 679.4(k)(4)(ii)(C)(1) would be corrected to require one documented harvest in each of any 2 calendar years during the period beginning January 1, 1992, through June 17, 1995. This correction makes the requirement for a Western Gulf area endorsement for vessel length category "A" consistent with the Council motion passed in June 1995.

### Comments Requested

The Council has submitted Amendments 60, 58, and 10 for Secretarial review, and a notice of availability of the amendments was published January 17, 2001 (66 FR 3976), with comments on the amendments invited through March 19, 2001. Comments received before the end of the comment period for this proposed rule, will not be considered in the approval/disapproval decision of the amendments, but will be considered in context of this proposed rule. The preamble of the final rule will contain a summary of the comments received both on the amendments and on the proposed rule. Copies of Amendments 60, 58, and 10 are available upon request (see ADDRESSES).

### Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

At this time, NMFS has not determined that Amendments 60, 58, and 10 that this proposed rule would implement are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an EA for 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 proposed changes, and the cumulative impacts of the all the changes, would have a negligible effect on the quality of the human

environment. Most proposed changes in this proposed 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 EA is available from NMFS (see ADDRESSES).

An IRFA was prepared that describes the impact this proposed rule, if adopted, would have on small entities. The analysis concludes that most persons affected by the proposed actions are small entities given their expected annual gross revenues are less than \$3 million or are assumed to be small entities because of insufficient annual receipts data. However, the ownership characteristics of vessels operating in the fishery have not been analyzed to determine if they are independently owned and operated or affiliated with a larger parent company due to insufficient data.

The proposed limitation on the transfer of licenses earned on an estimated 447 vessels that never held a Federal Fisheries Permit is intended to limit the potential for increasing fishing effort in the EEZ off Alaska, while allowing small vessels to continue to operate in both State and Federal waters. A person who did not obtain a Federal Fisheries Permit must have fished in the EEZ only incidentally and this action would not affect the ability of such a person to fish in State waters.

The proposed requirement to add gear endorsements to Alaska groundfish licenses is intended to restrict movement between trawl and non-trawl sectors. Council is concerned about excess capital and capacity in the fisheries. The estimated 2,435 affected license recipients are assumed to be small entities. A person's gear endorsement would be based on a history of past participation. A provision is proposed to allow a person to designate a gear type different from the one for which that person qualified, if certain criteria are met.

The exception for CDQ vessels was provided originally to assist the six CDQ organizations to enter the groundfish fisheries. This exception is not being used and is unnecessary because of business partnerships and specific allocations. A provision is proposed that would exempt any vessel from the license requirements of the LLP if a vessel took advantage of the exception prior to October 9, 1998.

The proposed addition of a recent participation requirement for eligibility for an estimated 93 crab license recipients, who are assumed to be small entities, addresses the Council's

concerns that reactivation of latent or unused capacity through transfers would further contribute to excess capacity in the crab fishery. This proposed action is consistent with the intent of the AFA to remove latent capacity in this fishery.

The proposal to allow an estimated 1,902 catcher vessels under 60 ft (18.3 m) LOA to process fish on a limited basis (i.e., 1 mt of round fish per day) would provide increased flexibility for small entities to take advantage of specialized markets and to use certain species of fish that spoil more rapidly than others.

The Council considered and adopted several measures to reduce the impacts on small entities. Rather than disqualifying license recipients who did not have a Federal Fisheries Permit, licenses with limited transferability would be issued to such recipients. A provision would be added to allow a recipient to designate a gear type different from the one for which that license recipient qualified, if meeting certain criteria. Rescinding the CDQ vessel exemption would have no impact on CDQ groups that have not used the CDQ exemption and a provision was added to protect any existing CDQ group from being disadvantaged. In considering the impact on small entities of a recent participation requirement, the Council recommended a period (January 1, 1996-February 7, 1998) that reduced the estimated number of affected small entities from 365 to 272.

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

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: March 26, 2001.

**William T. Hogarth,**

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

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be 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.*, and 3631 *et seq.*

2. In § 679.2, the definition for “Person” is revised to read as follows:

#### **§ 679.2 Definitions.**

\* \* \* \* \*

*Person* means any individual who is a citizen of the United States, or any corporation, partnership, association, or other entity (or its successor-in-interest),

regardless of whether organized or existing under the laws of any state, who is a U.S. citizen, except for purposes of High Seas Salmon Fishery permits issued under § 679.4(h), in which case the term “person” excludes any nonhuman entity.

3. In § 679.4, paragraphs (k)(2)(iv), (k)(3)(i), (k)(4)(i)(A), (k)(4)(i)(B), (k)(4)(ii), (k)(4)(iv)(A) introductory text, (k)(4)(iv)(B), (k)(4)(v)(A), (k)(4)(v)(B), and (k)(5)(ii) introductory text are revised and paragraphs (k)(3)(ii)(D), (k)(3)(iv), (k)(5)(iii), and (k)(5)(iv) 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 may conduct directed fishing for license limitation groundfish in the GOA and in the BSAI area without a groundfish license and for crab species in the Bering Sea and Aleutian Islands Area without a crab species license.

(3) *Vessel and gear designations and vessel length categories--(i) General.* A license can be used only on a vessel that complies with the vessel designation and gear designation specified on the license and 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 fish per day may be processed on a vessel less than or equal to 60 ft (18.3 m) LOA that is authorized to be used to fish for license limitation groundfish or crab species with a license with a catcher vessel designation.

(iii) \* \* \*

(iv) *Gear designations for groundfish licenses--(A) General.* A vessel may only use gear consistent with the gear designation on the 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 on 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 on 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 on 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. This requested change can be made in the application for an LLP license. 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. This requested change can be made in the application for an LLP license. 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 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) \* \* \*

(A) At least one documented harvest of any amount of license limitation groundfish must have been made from a vessel to qualify for one or more of the area endorsements in paragraphs (k)(4)(ii)(A) and (k)(4)(ii)(B) of this section. This documented harvest must have been of license limitation groundfish caught and retained in the BSAI or in waters shoreward of the BSAI and must have occurred during the following periods:

\* \* \* \* \*

(B) At least one documented harvest of any amount of license limitation groundfish must have been made from a vessel to qualify for one or more of the area endorsements in paragraphs

(k)(4)(ii)(C) through (k)(4)(ii)(E) of this section. This documented harvest must have been of license limitation groundfish caught and retained in the GOA or in waters shoreward of the GOA and must have occurred during the following periods:

\* \* \* \* \*

(ii) Endorsement qualification periods (EQP). A groundfish license will be assigned one or more area endorsements based on criteria in paragraphs (k)(4)(ii)(A) through (k)(4)(ii)(E) of this section.

(A) Aleutian Islands area endorsement. For a license to be assigned an Aleutian Islands area endorsement, at least one documented harvest of any amount of license limitation groundfish must have been made from a vessel in any vessel length category (vessel length categories "A" through "C") during the period beginning January 1, 1992, through June 17, 1995, in the Aleutian Islands Subarea or in waters shoreward of that subarea.

(B) Bering Sea area endorsement. For a license to be assigned a Bering Sea area endorsement, at least one documented harvest of any amount of license limitation groundfish must have been made from a vessel in any vessel length category (vessel length categories "A" through "C") during the period beginning January 1, 1992, through June 17, 1995, in the Bering Sea Subarea or in waters shoreward of that subarea.

(C) Western Gulf area endorsement--(1) *Vessel length category "A"*. For a license to be assigned a Western Gulf area endorsement based on participation from a vessel in vessel length category "A", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any two calendar years during the period beginning January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska on in waters shoreward of that area.

(2) *Vessel length category "B" and catcher vessel designation*. For a license to be assigned a Western Gulf area endorsement based on participation from a vessel in vessel length "B" and that would qualify for a catcher vessel designation under this section, at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel during the period beginning January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska or in waters shoreward of that area.

(3) *Vessel length category "B" and catcher/processor vessel designation*.

For a license to be assigned a Western Gulf area endorsement based on participation from a vessel in vessel length category "B" and that would qualify for a catcher/processor vessel designation under this section, at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any two calendar years during the period beginning January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska or in waters shoreward of that area, or at least four documented harvests of any amount of license limitation groundfish during the period beginning January 1, 1995, through June 17, 1995, in the Western Area of the Gulf of Alaska or in waters shoreward of that area.

(4) *Vessel length category "C"*. For a license to be assigned a Western Gulf area endorsement based on participation from a vessel in vessel length category "C", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel during the period beginning January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska or in waters shoreward of that area.

(D) *Central Gulf area endorsement--(1) Vessel length category "A"*. For a license to be assigned a Central Gulf area endorsement based on the participation from a vessel in vessel length category "A", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any two calendar years during the period beginning January 1, 1992, through June 17, 1995, in 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.

(2) *Vessel length category "B"*. For a license to be assigned a Central Gulf area endorsement based on the participation from a vessel in vessel length category "B", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any two calendar years during the period beginning January 1, 1992, through June 17, 1995, or at least four documented harvests of any amount of license limitation groundfish during the period beginning January 1, 1995, through June 17, 1995. These documented harvests must have occurred in 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.

(3) *Vessel length category "C"*. For a license to be assigned a Central Gulf area endorsement based on the participation from a vessel in vessel length category "C", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel during the period beginning January 1, 1992, through June 17, 1995, in 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.

(E) *Southeast Outside area endorsement--(1) Vessel length category "A"*. For a license to be assigned a Southeast Outside area endorsement based on the participation from a vessel in vessel length category "A", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any two calendar years during the period beginning January 1, 1992, through June 17, 1995, in the Southeast Outside District of the Gulf of Alaska or in waters shoreward of that district.

(2) *Vessel length category "B"*. For a license to be assigned a Southeast Outside area endorsement based on participation from a vessel in vessel length category "B", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any two calendar years during the period beginning January 1, 1992, through June 17, 1995, or at least four documented harvests of any amount of license limitation groundfish during the period beginning January 1, 1995, through June 17, 1995, in the Southeast Outside District of the Gulf of Alaska or in waters shoreward of that district.

(3) *Vessel length category "C"*. For a license to be assigned a Southeast Outside area endorsement based on the participation from a vessel in vessel length category "C", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel during the period beginning January 1, 1992, through June 17, 1995, in the Southeast Outside District of the Gulf of Alaska or in waters shoreward of that district.

\* \* \* \* \*

(iv) \* \* \*

(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) \* \* \*

(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) \* \* \*

(ii) *Area/species endorsements.* A crab species license will be assigned one or more area/species endorsements specified at § 679.2 based on criteria in paragraphs (k)(5)(ii)(A) through (G) and paragraph (k)(5)(iii) of this section.

\* \* \* \* \*

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

(B) *Exceptions to the RPP.* (1) A person who only qualifies for an area/species endorsement specified at paragraph (k)(5)(ii)(G) of this section does not need to meet the documented

harvest requirements of paragraph (k)(5)(iii) of this section.

(2) A person whose qualification for area/species endorsements specified at § 679.2 is based on documented harvests from a vessel length category "C" vessel does not need to meet the documented harvest requirements of paragraph (k)(5)(iii) of this section.

(3) A person whose vessel meets the documented harvest requirements of paragraphs (k)(5)(i) and (k)(5)(ii) of this section, whose vessel was lost or destroyed during the period from January 1, 1996, through February 7, 1998, and whose replacement vessel made a documented harvest during the period after the vessel was lost or destroyed but before January 1, 2000, does not need to meet the documented harvest requirements of paragraph (k)(5)(iii) of this section.

(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 PST on October 10, 1998, is exempted from the requirement of having a complete fishing history earned on one vessel.

\* \* \* \* \*

4. 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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