

eligibility criteria for a Pacific cod endorsement on more than one LLP license and that language at § 679.4(k)(9)(iii)(F)(3) may not allow for this application of the hardship provisions.

Response: NMFS has determined that the proposed regulatory language has no effect on the current exemptions for Pacific cod endorsement eligibility or on the "hardship" (unavoidable circumstance) provisions. The current regulation at § 679.4(k)(9)(v)(A) authorizes, in limited instances, the combination of qualifying harvests from a sunken vessel with harvests from a replacement vessel to satisfy the endorsement requirements. This final rule does not change that section. Section 679.4(k)(9)(v)(B), in very limited situations, allows the agency to make conjectures regarding qualifying harvests, for circumstances beyond the applicant's control, if an applicant can demonstrate on the record that qualifying harvests would have been made. This "hardship" provision is not affected by this final rule. This final rule simply clarifies, consistent with Council intent, that the fishing activities of one vessel may not give rise to Pacific cod endorsements on more than one LLP license.

Changes From the Proposed Rule

Section 679.4(k)(9)(iii)(F)(2) was changed in the final rule from the proposed rule to improve the clarity of the text. The phrase "by that vessel" was considered redundant and is removed. To clarify the type of endorsement-qualifying harvest history, the words "Pacific cod" were inserted before the text "endorsement-qualifying harvest." These changes provide clarity and are not substantial.

Classification

NMFS prepared a FRFA to evaluate the impact of this action on small entities, in accordance with the provisions of the Regulatory Flexibility Act of 1980, as modified by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 604(a)). The intentions of this action were explained in the preamble to the proposed rule (68 FR 20360, April 25, 2003).

An IRFA was prepared for the proposed rule and was described in the Classification section of the preamble to

the proposed rule. The public comment period ended on May 27, 2003. No comments were received on the economic impacts of the proposed rule.

The entities regulated by this action are those that did not qualify for a Pacific cod endorsement under a final rule published on April 15, 2002 (67 FR 18129), and would qualify under the approach as proposed by the Council in October 2002. According to an analysis prepared to support the Council's October 2002 deliberations, six entities appear to be affected by this action. Two of these are freezer longliners (hook-and-line catcher-processor vessels); one is a pot catcher processor vessel and three are pot catcher vessels. The economic appendix to the 2002 SAFE Report (see **ADDRESSES**) indicates that 31 hook-and-line catcher processor vessels active in the BSAI harvesting of Pacific cod were worth less than \$3.5 million each in 2001, while 14 harvesting of Pacific cod were worth more than \$3.5 million each. All BSAI pot catcher processor vessels and pot catcher vessels are small entities. Thus, about two-thirds of the vessels in this class in the BSAI are small entities. All six entities were treated as small entities for the purpose of this analysis.

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

This action has no adverse economic impacts on these entities. Each of these six small entities would be allowed to claim additional annual harvests to qualify for the BSAI Pacific cod endorsements to the LLP.

A status quo alternative to the action was considered but not adopted. It does not achieve the stated objective of the Council for this action or reduce the potential adverse economic burden on the small entities identified as subject to direct regulation by this action.

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: July 24, 2003.

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Deputy Assistant Administrator for Regulatory Programs, 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, paragraph (k)(9)(iii)(F) is revised to read as follows:

§ 679.4 Permits.

* * * * *

(k) * * *
(9) * * *
(iii) * * *

(F) Harvests within the BSAI Would count toward eligibility amounts in the table at paragraph (k)(9)(ii) of this section if:

(1) Those harvests were made from the vessel that was used as the basis of eligibility for the license holder's LLP groundfish license, or

(2) Those harvests were made from a vessel that was not the vessel used as the basis of eligibility for the license holder's LLP groundfish license, provided that, at the time the endorsement-qualifying Pacific cod harvests were made, the person who owned such Pacific cod endorsement-qualifying fishing history also owned the fishing history of a vessel that satisfied the requirements for the LLP groundfish license.

(3) Notwithstanding the provisions of paragraph (k)(9)(iii)(F)(2) of this section, the LLP groundfish license qualifying history or the Pacific cod qualifying history of any one vessel may not be used to satisfy the requirements for issuance of more than one LLP groundfish license endorsed for the BSAI Pacific cod hook-and-line or pot gear fisheries.

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