

In effect, the option the Council adopted was a compromise, because the third trimester's allocation of unused jig quota probably could not be completely harvested by the catcher vessels less than 60 ft (18.3) LOA and would be reallocated to hook-and-line catcher/processors during the last trimester. Depending on when fishery managers are able to project catch for the second trimester, some or all of the reallocated jig catch from the second trimester might also be reallocated to the hook-and-line catcher/processor fleet.

The small boat fleet is most capable of fishing in the spring and summer, partly due to weather considerations later in the year. Other constraints exist as well. Hook-and-line vessels cannot fish for Pacific cod between noon on June 10 and noon on August 15 because they typically receive little or no halibut bycatch as part of the rulemaking implementing the annual harvest specifications; and pot vessels are constrained by the A and B seasons established under Steller sea lion protection measures. Under these measures, pot vessels greater than or equal to 60 ft (18.3 m) LOA may not harvest BSAI Pacific cod in a directed fishery between June 10, when the A season ends and September 1, when the B season begins. The A season share is 60 percent and the B season share is 40 percent of the pot quota. Whenever the general pot gear fisheries are closed, catcher vessels less than 60 ft (18.3 m) LOA using pot gear are allowed to harvest the 1.4 percent of the BSAI Pacific cod TAC set aside for catcher vessels less than 60' LOA. As of September 1, however, all pot catcher boats, including those under 60 ft (18.3 m) LOA, would fish for the B season portion of the proposed 15 percent allocation to pot catcher vessels. In other words, small vessels fishing with pot gear are unlikely to need extra quota over the fall months, when they are much less likely to want to fish due to poor weather conditions in the Bering Sea, and when their harvests are deducted from the general pot catcher vessel quota. The jig gear reallocation in the proposed rule would, however, allow them to avoid the constraint of the 1.4 percent quota which limits them during the summer months.

Classification

At this time, NMFS has not determined whether the amendment that this proposed rule would implement is 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.

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

The Council prepared an Initial Regulatory Flexibility Analysis (IRFA), which describes any adverse impacts this proposed rule, if adopted, would have on directly regulated small entities. A summary of the IRFA follows:

The directly regulated entities for Amendment 77 would be those vessels participating in the Pacific cod fixed gear fishery in the BSAI. The Small Business Administration has established size criteria for defining a small entity in the fish harvesting business; it must be independently owned and operated, not dominant in its field of operation (including its affiliates), and with combined annual receipts not in excess of \$3.5 million for all its affiliated operations worldwide. Some vessels that participate in the Pacific cod fixed gear fishery might be considered large entities under the SBA definition because they are either affiliated under owners of multiple vessels or are catcher/processors. However, little is known about the ownership structure of the vessels in the fleet, and for purposes of the IRFA, all Pacific cod hook-and-line and pot catcher vessels were considered small businesses.

The smallest entities in the catcher vessel fleets, vessels less than 60 ft (18.3 m) LOA, do not need a Pacific cod endorsement to continue prosecuting the BSAI Pacific cod fishery, but they must meet the requirements of the License Limitation Program (LLP). Thirty-two unique pot catcher vessels and 96 hook-and-line catcher vessels in this size category are documented to have made at least one landing in the directed BSAI Pacific cod fishery during 1995–2001 and appear to be qualified under the LLP to use non-trawl gear in the BSAI groundfish fisheries. On average since 1995, however, only 18 hook-and-line and 5 pot catcher vessels have participated in any one year.

Amendment 67 to the BSAI Groundfish FMP, which became effective January 1, 2003, adds a Pacific cod endorsement to Federal licenses held by fixed gear vessels that qualify for a BSAI area endorsement under the current LLP and also meet specified qualification criteria in terms of catch history for their gear type. Under Amendment 67, a total of about 57 catcher vessels greater than or equal to 60 ft (18.3 m) LOA (3 longline and 54 pot vessels) likely will receive catcher vessel (CV) endorsements on their licenses to participate in the Bering Sea

Pacific cod fixed gear fishery. This is a substantial reduction in the fleet 129 unique longline and 226 unique pot catcher vessels of any length participated at any time from 1995 to 2001. An estimated forty-six vessels greater than or equal to 60 ft (18.3 m) LOA (40 longline and 6 pot vessels) likely will receive catcher/processor (CP) endorsements on their licenses to participate in the Bering Sea Pacific cod fixed gear fishery. In addition, an estimated six longline catcher/processors and three pot catcher processors will qualify for a CV endorsement for their respective gear types.

Although the appeals processes associated with interim licenses are not complete, all 54 of the pot catcher vessels, and one of the pot catcher/processors, that potentially qualify for a Pacific cod endorsement appear to have earned gross revenues of less than \$3.5 million and thus are considered small businesses.

Due to the small number of participants, data regarding the three hook-and-line catcher vessels are confidential, but they all appear to have earned revenues of less than \$3.5 million and thus are considered small businesses. Of the six longline catcher/processors that meet only the CV qualifications for endorsements, which is based on landings over the years 1995–1999, all six appear to meet the SBA definition of small businesses. Several others among the 40 catcher/processor vessels are estimated to receive a hook-and-line CP endorsement also reported annual receipts of less than \$3.5 million; however, little is known about the ownership of this fleet, so developing a meaningful estimate of how many are small entities is not possible.

Adding these numbers gives a total estimate of about 87 vessels that would be directly regulated by this action: 55 pot vessels greater than or equal to 60 ft (18.3 m) LOA; 5 pot vessels less than 60 ft LOA; 9 hook-and-line vessels greater than or equal to 60 ft (18.3 m) LOA; and 18 hook-and-line catcher vessels less than 60 ft (18.3 m) LOA.

The IRFA analysis of expected impacts on small entities under the alternatives noted that, because the proposed action would maintain a percentage distribution among gear sectors very close to the average harvest level since 1995, net effects would be expected to be minimal relative to the status quo alternative and possibly in relation to the no action alternative as well. The IRFA assumes that the distribution of harvest would not change significantly under the no action