

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

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

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

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

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

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

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

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

Comments on Potential Impacts to Steller Sea Lions

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

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

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

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

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

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

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

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

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

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

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

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