

rates, but actually the exemption was due to the small magnitude of the allocation and the difficulty of splitting the allocation into an A and B season for that sector.

*Response:* NMFS has made some corrections in the EA. Revisions to draft analytical documents during the process of Council and Secretarial decisionmaking are normal. The EA provided to the Council is a draft for Council review. A draft EA is subsequently released for public review and comment, with the proposed rule. Public comments on draft EAs are welcomed by the Council and NMFS and improve the information and analysis that ultimately inform the decision. NMFS appreciates and welcomes public comments on all draft NEPA documents.

*Comment 19:* The commentator supports the final rule and notes that the small catcher vessel fleet is still under the same rules for Steller sea lions as all other vessels.

*Response:* NMFS agrees that the small catcher vessel fleet must abide by the rules for Steller sea lions, as do all other vessels. However, catcher vessels less than 60 ft (18.3 m) LOA are not subject to the seasonal restrictions that apply to the fixed gear vessels greater than or equal to 60 ft (18.3 m) LOA.

#### *Comments on Habitat and Bycatch Issues*

*Comment 20:* The reallocation of unharvested jig gear quota is consistent with national standard 9: "Minimize bycatch, and to the extent bycatch cannot be avoided, minimize the mortality of such bycatch."

The jig fishery is a very low bycatch and low impact fishery, and therefore no bycatch standard or caps are required for the jig fishery. Similarly, no bycatch allocation has been made for pot vessels less than 60 ft (18.3 m) LOA because of the low bycatch. Reallocating unused jig quota to vessels less than 60 ft (18.3 m) will utilize the quota by giving it to the most comparable fishery in terms of low bycatch and low impact. This will maintain the highest compliance with national standard 9. Fishing on pot catcher vessels less than 60 ft (18.3 m) is done in an environmentally sensitive manner.

The EA/RIR/IRFA showed no detrimental or serious adverse impacts from the action.

*Response:* NMFS agrees that pot gear is a relatively selective gear type, and observer coverage on larger pot boats indicates relatively low incidental catch rates for pot gear for most species.

#### *Comment on Commercial Fisheries*

*Comment 21:* Amendment 77 is wrong. NMFS should stop overfishing, should cut the total catch by 50 percent, and should read the Pew Report. The amendment should stop ALL of the fishing proposed by North Pacific Fishery Management Council, which is composed of commercial fishermen primarily interested in making money from fish stocks which are continually declining.

*Response:* None of the groundfish fisheries managed by NMFS off Alaska are overfished, nor does NMFS allow overfishing to occur in the North Pacific groundfish fisheries. Each year, NMFS specifies overfishing levels for each fishery under its management. For the Pacific cod fishery in the BSAI, which is the fishery of concern in Amendment 77, NMFS specified an overfishing level of 324,000 mt in 2003, but the TAC for 2003 was set at only 207,500 mt. National standard 1 of the Magnuson-Stevens Act requires that conservation and management measures prevent overfishing while achieving optimum yield from each fishery. The management of this fishery is fully in compliance with national standard 1 and all other provisions of the Magnuson-Stevens Act.

#### **Changes From the Proposed Rule to the Final Rule**

One change has been made from the proposed rule to the final rule. In § 679.20, paragraph (a)(7)(ii)(B), has been modified to clarify that if small catcher vessels that receive unused jig gear quota are unable to harvest any of that quota, NMFS may reallocate the unharvested amount as a directed fishing allowance to catcher/processor vessels using hook-and-line gear. The modification does not implement any change of policy from that presented for comment in the proposed rule but instead clarifies the sequence of reallocations of unused jig gear quota.

#### **Classification**

The Administrator, Alaska Region, NMFS, determined that this final rule is necessary for the management of the BSAI groundfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This action has been determined to be not significant under Executive Order 12866. No new reporting, recordkeeping, or compliance requirements are imposed by this final rule.

NMFS has prepared a FRFA, which analyzes the impacts of Amendment 77 on small entities. A copy of this analysis

is available from NMFS. The Initial Regulatory Flexibility Analysis (IRFA) is contained in section 4.3 of the EA/RIR/IRFA, and is also available from NMFS. A summary of the findings from the FRFA follows:

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action is contained in the preamble to the proposed rule.

No comments were received specifically on the IRFA. However, several comments were received on the economic impacts of Amendment 77 on different sectors of the industry. For a summary of the comments received, refer to the section above titled "Comments and Responses."

The directly regulated entities for Amendment 77 will be those vessels participating in the Pacific cod fixed gear fishery in the BSAI. A total of about 87 small entities will be directly regulated by this action: 55 pot vessels greater than or equal to 60 ft (18.3 m) 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.

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

NMFS considered four alternatives and adopted elements of its Alternatives 2 and 4. Because these alternatives often involved tradeoffs between different groups, and because all the groups affected included small entities, some groups of small entities might have experienced smaller adverse impacts under some of these alternatives, but these would have been accompanied by increased adverse impacts for other groups of small entities.

Alternative 1 would allow the fleet allocations to expire. This would increase competition among gear groups for shares of the Pacific cod. This increased competition was expected to reduce the profitability of the fishery in general. Moreover, the heightened competition under this alternative was expected to impose a disproportionate burden on the smallest entities.

Alternative 3 would modify the current BSAI Pacific cod allocations. Under one option, the allocation for catcher vessels less than 60 ft (18.3 m) LOA would either be removed, or would change from 1.4 percent to 0.3 percent, to conform to actual historical catch history from 1995 to 1999. Under another option, the allocation for small catcher vessels would be retained at 1.4 percent, but subtracted proportionally from other sectors and not just from hook-and-line catcher processors as occurred under Amendment 64. The