

**ADDRESS:** The hearing will be at the DOT Headquarters building, Room 2230, 400 Seventh Street, SW., Washington, DC 20590-0001.

**FOR FURTHER INFORMATION CONTACT:** *General Information.* To request time to be heard at the Washington hearing and for other general information about the Washington hearing and others scheduled for later throughout the country, contact Mr. Stanley Hamilton, Office of Regulatory Development, (202) 366-0665. *Specific Information.* For information concerning the rulemaking contact Mr. David Miller, Office of Bus and Truck Standards, (202) 366-1790, or Mr. Charles Medalen, Office of the Chief Counsel, Federal Highway Administration, (202) 366-1354. Office hours are from 7:45 a.m. to 4:15 p.m., et, Monday through Friday, except Federal holidays.

**Authority:** 49 U.S.C. 322, 31502, and 31136; and 49 CFR 1.73.

Issued on: May 22, 2000.

**Brian M. McLaughlin,**  
*Director, Office of Policy Plans and Regulations.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 000511130-0130-01; I.D. 032900C]

RIN 0648-AN25

#### Fisheries of the Exclusive Economic Zone Off Alaska; Allocation of Pacific Cod among Vessels Using Hook-and-Line or Pot Gear in the Bering Sea and Aleutian Islands

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

**ACTION:** Proposed Rule; proposed revision to the 2000 harvest specifications for Pacific cod; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Amendment 64 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This proposed amendment would also necessitate a revision to the 2000 harvest specifications for Pacific cod in the Bering Sea and Aleutian Islands management area (BSAI). Amendment

64, submitted by the North Pacific Fishery Management Council (Council), would apportion the hook-and-line or pot gear (fixed gear) allocation of total allowable catch (TAC) of Pacific cod in the BSAI among hook-and-line catcher-processor vessels, hook-and-line catcher vessels, and pot gear vessels. This action is necessary to respond to socio-economic needs of the fishing industry that have been identified by the Council and is intended to promote the goals and objectives of the FMP.

**DATES:** Comments must be received by July 10, 2000.

**ADDRESSES:** Comments must be sent to Sue Salvesson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel. Hand or courier delivered comments may be sent to the Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801. Comments also may be sent via facsimile (fax) to 907-586-7465. Comments will not be accepted if submitted via e-mail or the Internet. Copies of Amendment 64 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for the amendments are available from the North Pacific Fishery Management Council at 605 West 4th Ave. Suite 306, Anchorage, AK 99501, telephone 907-271-2809.

**FOR FURTHER INFORMATION CONTACT:** James Hale, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries in the Exclusive Economic Zone (3 to 200 miles offshore) of the BSAI under the FMP, which the Council prepared and NMFS approved in 1982 under the Magnuson-Stevens Fishery Conservation and Management Act, P. L. 94-265, 16 U.S.C. 1801 (Magnuson-Stevens Act).

The Council has submitted Amendment 64 for Secretarial review. NMFS published a Notice of Availability (NOA) of the FMP amendment in the **Federal Register** on April 11, 2000 (65 FR 19354), with comments on the FMP amendment invited through June 12, 2000. Written comments may address the FMP amendment, the proposed rule, or both, but must be received by June 20, 2000 to be considered in the decision to approve or disapprove the FMP amendment.

#### Background and Need for Action

Beginning in 1997, Amendment 46 to the FMP allocated the TAC for BSAI Pacific cod among vessels using jig gear, trawl gear, and hook-and-line or pot

gear. Two percent of the TAC is reserved for jig gear, 51 percent for hook-and-line or pot gear, and 47 percent for trawl gear. The amendment further split the trawl allocation equally between catcher vessels and catcher/processor vessels, but no split was adopted for the 51 percent allocated to hook-and-line or pot vessels.

Since the approval of Amendment 46, increasing competition for Pacific cod among catcher/processor and catcher vessels using pot or hook-and-line gear has given rise to new allocation issues. Increased prices for Pacific cod, reduced crab guideline harvest levels, and shortened or canceled crab seasons due to low resource abundance have resulted in increased harvests of Pacific cod by vessels using pot gear. Fishermen displaced from crab fisheries have expressed ongoing interest in fishing for Pacific cod aggravating the concerns of long-term Pacific cod fishermen about erosion of their gear harvest shares in the cod fishery in favor of new entrants using pot gear who, until very recently, focused harvest activity in the BSAI crab fisheries.

In response to these concerns, the Council initiated an analysis at its April 1999 meeting of the effects of splitting the hook-and-line or pot gear allocation of Pacific cod in the BSAI among hook-and-line catcher/processor vessels, hook-and-line catcher vessels, and all vessels using pot gear. At its June 1999 meeting, the Council reviewed the analysis and drafted the following problem statement to guide further analysis of alternatives for Amendment 64:

The hook-and-line and pot fisheries for Pacific cod in the Bering Sea/Aleutian Islands are fully utilized. Competition for this resource has increased for a variety of reasons, including increased market value of cod products and a declining [acceptable biological catch and total allowable catch.] Longline and pot fishermen who have made significant long-term investments, have long catch histories, and are significantly dependent on the BSAI cod fisheries need protection from others who have little or limited history and wish to increase their participation in the fishery. This requires prompt action to promote stability in the BSAI fixed gear cod fishery until comprehensive rationalization is completed.

The subsequent analysis reviewed, in addition to the status quo, alternatives for separate Pacific cod allocations for the different hook-and-line and pot gear users that approximate their historical catches over the past 4 years. The options analyzed determined those percentages based on catch histories from (1) 1996 and 1997, (2) 1997 and 1998, (3) 1996 through 1998, and (4) 1995 through 1998. In general, the

allocations that would result from these options ranged between 80 and 85 percent to hook-and-line vessels and between 15 and 20 percent to pot vessels.

At its October 1999 meeting, the Council adopted Amendment 64 to set Pacific cod directed fishing allowances for the different hook-and-line and pot gear users (sectors) in the following percentages: Hook-and-line catcher/processor vessels, 80 percent; hook-and-line catcher vessels, 0.3 percent; pot gear vessels, 18.3 percent; and hook-and-line or pot catcher vessels less than 60 feet length overall (LOA), 1.4 percent. These percentages represent divisions of the hook-and-line or pot gear TAC after a deduction of estimated incidental catch of Pacific cod in other groundfish hook-and-line or pot gear fisheries.

The proposed amendment also provides that harvests by pot and hook-and-line catcher vessels less than 60 feet LOA would accrue against the 1.4 percent allocation only after pot vessels and hook-and-line catcher vessels harvest the respective 18.3 percent and 0.3 percent allocations. Managing the allocations in this manner would ensure that cod is available to the smaller catcher vessels even after the larger vessels in their gear sector have taken their allocation. Nevertheless, if the pot gear fishery lasts longer than the hook-and-line fishery, then the small hook-and-line catcher vessels could begin (and possibly finish) harvesting the 1.4 percent allocation before catcher vessels under 60 feet using pot gear have an opportunity to harvest any of the 1.4 percent set aside for smaller catcher vessels.

Because a sector of the BSAI Pacific cod fishery may not be able to harvest its entire allocation in a year due to halibut bycatch constraints or, in the case of the jig fishery, insufficient effort in the fishery, the Council also provided direction on how projected unharvested amounts of a gear's directed fishing allowance may be transferred to a different user group. Unharvested amounts (roll-overs) from the jig or trawl gear allocations would be apportioned between catcher-processors using hook-and-line gear and vessels equal to or greater than 60 ft LOA using pot gear according to the actual harvest of roll-overs by these two sectors during the 3-year period from 1996–98. Projections based on information in the analysis for this proposed action indicate that 94.7 percent of the cod would be allocated to the hook-and-line catcher-processor fleet and the remaining 5.3 percent to the pot fleet. In addition, any amounts of Pacific cod

annually allocated to catcher vessels using hook-and-line gear or to vessels less than 60 ft (18.3 meters(m)) LOA that are projected to remain unharvested would be rolled over to the hook-and-line catcher-processor fleet in September.

The Council recommended that the Pacific cod directed fishing allowances proposed under Amendment 64 for the different hook-and-line and pot gear sectors would terminate on December 31, 2003. On that date, Pacific cod allocation would revert to the current regime unless the Council adopts and NMFS approves a new FMP amendment to continue the proposed allocations of Pacific cod or implement new allocation percentages after that date. In adopting an expiration date for the proposed amendment, the Council reasoned that 3 years would be sufficient time to evaluate the impact of this action in light of other impending changes for the BSAI fixed gear fishery, such as, proposed Amendment 67 to require Pacific cod and gear endorsements on permits issued under the License Limitation Program (LLP). Whereas this proposed action would establish allocations for different sectors of the fixed gear cod fishery, proposed Amendment 67 would limit the participants to those who meet certain historical criteria.

In adopting Amendment 64, the Council recognized that a separate regulatory amendment would be needed to apportion the 900 mt Pacific halibut prohibited species mortality limit established for nontrawl gear in regulations at § 679.21(e)(2) among catcher vessels and catcher/processor vessels fishing for Pacific cod using hook-and-line gear. Current regulations only authorize a separate Pacific halibut bycatch allowance to the "Pacific cod hook-and-line fishery" defined at § 679.21(e)(4)(ii)(A). Thus, catcher/processor vessels using hook-and-line gear to fish for Pacific cod could attain amounts of halibut bycatch mortality that would result in prohibition of directed fishing for Pacific cod by all vessels using hook-and-line gear, including catcher vessels using this gear type under a separate Pacific cod directed fishing allowance.

To respond to this concern, the Council has requested staff to develop an analysis of regulatory measures that would authorize further allocation of the Pacific halibut mortality limits among vessels using hook-and-line or pot gear. If adopted by the Council in the future, this regulatory amendment would be published as a separate proposed rule for public review and comment.

### Incidental Catch Allowance

Pacific cod also are taken incidentally in directed fisheries using hook-and-line or pot gear for other species. To the extent practicable, NMFS credits this incidental harvest against the TAC to ensure that Pacific cod are not overharvested. The proposed rule to implement Amendment 64 would require the Administrator, Alaska Region, NMFS, (Regional Administrator), to annually establish an incidental catch allowance for Pacific cod taken in other directed hook-and-line and pot fisheries for groundfish. The incidental catch allowance would be deducted from the overall hook-and-line or pot gear allocation of the Pacific cod TAC before that allocation is divided among the different hook-and-line and pot gear user groups.

NMFS acknowledges that incidental catch of Pacific cod occurs in non-groundfish fisheries such as the hook-and-line gear fishery for Pacific halibut or crab pot gear fisheries. Sufficient data currently are not collected from these fisheries that would allow NMFS to extrapolate useful estimates of incidental catch for purposes of specifying the annual ICA and deducting these amounts from the Pacific cod TAC allocated to vessels using hook-and-line or pot gear as directed fishing allowances. The total incidental catch amount of Pacific cod in the crab and Pacific halibut fisheries likely exceeds several thousand metric tons (mt) based on (1) anecdotal information on the amount of incidentally caught Pacific cod used as bait in the crab fisheries, (2) the fact that the Pacific halibut fishery during summer months typically occurs in relatively shallow water where Pacific cod are prevalent, and (3) assumptions on amount of gear deployed and incidental catch rates. In the absence of the quantitative data needed to estimate incidental Pacific cod harvests in the halibut and crab fisheries, NMFS intends to estimate the ICA only on the basis of incidental catch estimated for the non-Pacific cod hook-and-line or pot gear groundfish fisheries.

NMFS recognizes the potential biological significance of not accounting for all incidental catch of Pacific cod in non-trawl fisheries and intends to explore with the State of Alaska and the International Pacific Halibut Commission options to collect better information on incidental catch rates of non-target species in the crab and Pacific halibut fisheries. NMFS further anticipates that improved estimates of incidental catch amounts in these fisheries will be available to the Council

when it reassesses BSAI Pacific cod allocation issues prior to the proposed expiration date of Amendment 64. Until then, NMFS' stock assessment scientists believe that, while the amounts of Pacific cod taken in the crab and Pacific halibut fisheries could exceed several thousand mt, this level of mortality does not pose significant concerns for overfishing or sustainable resource management of the Pacific cod resource given the conservative management of this species under the FMP. That being said, NMFS firmly believes that steps must be taken to collect the data necessary to obtain better estimates of overall mortality of Pacific cod in the non-groundfish fisheries.

Subsequent to the Council's October 1999 adoption of proposed Amendment 64, several owners of catcher/processor vessels using pot gear to participate in a directed fishery for Pacific cod petitioned the Council to initiate a separate FMP amendment that would authorize separate Pacific cod directed fishing allowances for catcher/processor vessels using pot gear and catcher vessels using pot gear. This petition was based on the assumptions that increased

fishing effort for Pacific cod with pot gear is due primarily to catcher vessels using pot gear and that the historical harvest share of cod by catcher/processor vessels using pot gear is threatened. In response to these concerns, the Council requested staff to develop a separate FMP amendment that would authorize a further allocation of Pacific cod between these two sectors. If adopted by the Council in the future, the proposed amendment and its implementing rule would be published in the **Federal Register** for public review and comment.

In December 1999, the Council recommended seasonal allowances for the 51 percent of the Pacific cod TAC allocated to the hook-and-line or pot gear fisheries. The seasonal allowances are authorized under § 679.20(a)(7)(iv) and are based on the criteria set forth at § 679.20(a)(7)(iv)(B). The final 2000 harvest specifications for BSAI groundfish were approved by NMFS and published in the **Federal Register** on February 18, 2000 (65 FR 8282).

If approved by NMFS, the final rule implementing Amendment 64 would revise the final 2000 harvest

specifications in concert with the hook-and-line and pot gear allocations proposed under the amendment. The final 2000 harvest specifications set the hook-and-line or pot gear allocation of the 2000 Pacific cod TAC at 91,048 mt. An incidental catch allowance of 500 mt, derived from estimates of incidental catch of Pacific cod in other groundfish fisheries from 1996–1999, would be deducted from the hook-and-line or pot gear allocation of the Pacific cod TAC before the allocation is apportioned to the separate gear sectors. Table 1 lists the proposed revisions to the 2000 allocations and seasonal apportionments of the Pacific cod TAC.

Consistent with § 679.20(a)(7)(iv)(C), any portion of the first seasonal allowance of the catcher/processor hook-and-line gear allocation that is not harvested by the end of the first season would become available on September 1, the beginning of the third season. No seasonal apportionment of the amounts of Pacific cod allocated to catcher vessels or to vessels using pot gear is proposed for 2000.

TABLE 1.—GEAR SHARES AND SEASONAL APPORTIONMENTS OF THE BSAI PACIFIC COD HOOK-AND-LINE AND POT GEAR ALLOCATION

Gear sector	Percent	Share (mt)	Seasonal apportionment <sup>1</sup>	
			Date	Amount (mt)
Hook-and-line Catcher-processors .....	80	72,438	Jan 1–Apr 30 ....	52,000
			May 1–Aug 31 ..	20,438
			Sept 1–Dec 31 ...	16,570
Hook-and-Line Catcher Vessels .....	0.3	272	Jan 1–Dec 31 ...	272
Pot Gear Vessels .....	18.3	16,570	Jan 1–Dec 31 ...	1,268
Catcher Vessels under 60 feet LOA using Hook-and-line or Pot Gear .....	1.4	1,268	Jan 1–Dec 31 ...	90,548
Sub-total .....	100	90,548		500
Incidental Catch Allowance .....		500		91,048
Total hook-and-line and pot gear allocation of Pacific cod TAC		91,048		

<sup>1</sup> Any unused portion of the first seasonal Pacific cod allowance specified for catcher/processers using hook-and-line fishery will be reapportioned to the third seasonal allowance.

## Implementation

In the event that NMFS approves this action and implements it mid-season during the 2000 fishing year, any overage of a sector's annual allocation of Pacific cod would be deducted proportionately from the other sectors' allocation remaining for the year.

## Classification

At this time, NMFS has not determined that the FMP amendment this 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.

The Council prepared an EA for this FMP amendment that discusses the impact on the environment as a result of this rule. A copy of this EA is available from the Council (see **ADDRESSES**).

The Initial Regulatory Flexibility Analysis (IRFA) prepared for this action indicates that the proposed amendment could negatively affect a number of small entities. For purposes of the Regulatory Flexibility Act (RFA), all

catcher vessels fishing for Pacific cod using hook-and-line or pot gear can be considered small businesses, with annual receipts of less than \$3 million. Under the current LLP, approximately 330 catcher vessels would be authorized to participate in the Bering Sea Pacific cod hook-and-line or pot gear fishery. Of the 98 catcher-processor vessels potentially authorized under the LLP to fish for Pacific cod, approximately one-third could be considered small entities.

Five of the ten shore-based plants and floating processors operating within Alaskan state waters and processing most of the Pacific cod harvested by hook-and-line or pot gear catcher vessels would be considered small businesses under RFA, processing less than 2 percent of the total shoreside landings of Pacific cod by catcher vessels in 1998. Other small entities affected by the proposed amendment include the three Alaskan communities that are home to processing plants that process limited amounts of BSAI Pacific cod: King Cove, Egegik, and Kenai.

The proposed amendment would allocate a portion of the Pacific cod resource away from the longline catcher-processor fleet and move it to the catcher vessels delivering to shore-based processors. Because the longline catcher-processor fleet comprises the highest number of large entities of any sector fishing off Alaska, this allocation would tend to favor small entities. By implementing the allocations by gear sector without limiting the number of vessels in any gear sector that may enter the fishery, this action may have the effect of increasing competition among users. However, the Council at its April 2000 meeting took final action to mitigate the effect of this action on competition within gear sectors by recommending for approval by NMFS a proposed amendment to require gear and species endorsements on licenses of those who wish to participate in the fixed gear BSAI Pacific cod fishery.

The magnitude of the proposed amendment's impact cannot be conclusively determined with the data currently available. Most persons operating in the fishery affected by the proposed action are small entities given their expected annual gross revenues of less than \$3 million, and revenues could potentially be decreased by more than 5 percent, but that depends on the level of catch that might have been achieved in the absence of an allocation. Also, impacts of this action on potential revenues cannot be isolated from other factors including price fluctuation, amount of effort exerted by latent permits, and stock fluctuation of alternative fisheries such as crab.

This action would not limit the number of vessels moving into the Pacific cod fishery from the crab fishery because of downward trends in the Bering Sea crab stocks, and any increase in participation of crab vessels in the Pacific cod pot gear fishery would increase competition for the 18.3 percent of the fixed gear Pacific cod TAC allocated to pot gear vessels and the 1.4 percent allocated to vessels under 60 ft LOA. As noted here, the

Council intends to mitigate this impact with proposed Amendment 67, which would require gear and species endorsements based on historical participation in the fishery.

Nothing in this proposed action would result in any changes in reporting or recordkeeping requirements, or any obvious disproportionment regulatory impacts to small entities relative to large. From one perspective, setting a percentage allocation will keep one sector from increasing its share relative to what it could do under the status quo. From the information in the analysis, and from public testimony before the Council, it appears likely that the pot sector would increase its relative share in the absence of a quota split. From another perspective, adoption of the Council's preferred alternative would serve to increase the current share of the smallest entities. In deliberations on this action, the Council considered alternative allocation options, based on historical percentages of catch by the different gear sectors, that would have had varying degrees of impact on small entities in the fixed gear Pacific cod fishery. For longline catcher processors, the annual average harvests ranged from 80 percent of the fixed gear Pacific cod TAC for the years 1996–97 to 86.5 percent for the years 1997–98. For this gear sector the Council chose the lower end of the range, thus leaving a larger percentage of the TAC remaining for longline catcher vessels, pot vessels, and both longline and pot vessels under 60 ft LOA. The allocation options reviewed for longline catcher vessels ranged from 0 percent in the years 1996–97 to 0.25 percent for the years 1995–98. The Council chose a slightly higher percentage (3.0 percent) than the highest average reviewed in the options. For pot vessels, the options ranged from an average harvest of 13.5 percent for the years 1997–98 to 21 percent for 1996–97. While the higher average would have had less impact on small entities in the pot sector, the Council chose to set the pot allocation at 18.3 percent and provided for small entities that are pot or longline vessels under 60 ft LOA by setting aside for those vessels an allocation that represents a larger percentage of the TAC than vessels under 60 ft LOA have historically harvested.

This analysis did not reveal any existing Federal rules that duplicate, overlap, or conflict with any to the actions proposed in the alternatives.

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

The President has directed Federal agencies to use plain language in their

communications with the public, including regulations. To comply with that directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this rule.

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

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: May 19, 2000.

**Penelope D. Dalton,**

*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 as follows:

#### PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.20, paragraph (a)(7)(i)(C) is redesignated as paragraph (a)(7)(i)(D), paragraph (a)(7)(ii)(B) is redesignated as paragraph (a)(7)(ii)(C), redesignated paragraphs (a)(7)(i)(D) and (a)(7)(ii)(C) and paragraphs (a)(7)(iv)(A), (a)(7)(iv)(C) and (b)(1)(v) are revised, paragraph (a)(7)(iii) is removed, and new paragraphs (a)(7)(i)(C) and (a)(7)(ii)(B) are added to read as follows:

#### § 679.20 General limitations.

\* \* \* \* \*

(a) \* \* \*

(7) \* \* \*

(i) \* \* \*

(C) *Allocations among vessels using hook-and-line or pot gear (Applicable through December 31, 2003).* (1) The Regional Administrator annually will estimate the amount of Pacific cod taken as incidental catch in directed fisheries for groundfish other than Pacific cod by vessels using hook-and-line or pot gear and deduct that amount from the portion of Pacific cod TAC annually allocated to hook-and-line or pot gear under paragraph (a)(7)(i)(A) of this section. The remainder will be further allocated as directed fishing allowances as follows:

- (i) 80 percent to catcher/processor vessels using hook-and-line gear;
- (ii) 0.3 percent to catcher vessels using hook-and-line gear;
- (iii) 18.3 percent to vessels using pot gear; and
- (iv) 1.4 percent to catcher vessels less than 60 feet LOA that use either hook-and-line or pot gear.

(2) Harvests of Pacific cod made by catcher vessels less than 60 feet (18.3 m)

LOA using pot gear will not accrue to the 1.4 percent allocation under paragraph (a)(7)(i)(C)(1)(iv) of this section until vessels using pot gear have harvested the 18.3 percent allocated to all vessels using pot gear under paragraph (a)(7)(i)(C)(1)(iii) of this section.

(3) Harvests of Pacific cod made by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line gear will not accrue to the 1.4 percent allocation under paragraph (a)(7)(i)(C)(1)(iv) of this section until catcher vessels using hook-and-line gear have harvested the 0.3 percent allocated to all catcher vessels using hook-and-line gear under paragraph (a)(7)(i)(C)(1)(ii) of this section.

(D) The Regional Administrator may establish separate directed fishing allowances and prohibitions authorized under paragraph (d) of this section for vessels harvesting Pacific cod using trawl gear, jig gear, hook-and-line gear, or pot gear.

(ii) \* \* \*

(A) \* \* \*

(B) *Reallocation among vessels using hook-and-line or pot gear.* If, during a fishing year, the Regional Administrator determines that catcher vessels using hook-and-line gear or vessels less than 60 ft (18.3 m) LOA using hook-and-line or pot gear will not be able to harvest the directed fishing allowance of Pacific cod allocated to those vessels under paragraphs (a)(7)(i)(C)(1)(ii) or (a)(7)(i)(C)(1)(iv) of this section, NMFS may reallocate the projected unused amount of Pacific cod as a directed fishing allowance to catcher/processor vessels using hook-and-line gear

through notification in the **Federal Register**.

(C) *Reallocation between vessels using trawl or non-trawl gear.* If, during a fishing year, the Regional Administrator determines that vessels using trawl gear, hook-and-line gear, pot gear or jig gear will not be able to harvest the entire amount of Pacific cod in the BSAI allocated to those vessels under paragraphs (a)(7)(i)(A), (a)(7)(i)(B) or (a)(7)(i)(C) of this section, NMFS may reallocate the projected unused amount of Pacific cod to vessels harvesting Pacific cod using the other gear type(s) through notification in the **Federal Register**, except as provided below:

(1) *Reallocation of TAC specified for jig gear.* On September 15 of each year, the Regional Administrator will reallocate any projected unused amount of Pacific cod in the BSAI allocated to vessels using jig gear only to vessels using hook-and-line or pot gear through notification in the **Federal Register**.

(2) *Reallocation of TAC to catcher/processor vessels using hook-and-line gear or vessels using pot gear.* Any unharvested amounts of Pacific cod TAC that are reallocated from vessels using trawl or jig gear to catcher/processor vessels using hook-and-line gear or vessels using pot gear to increase directed allowances established under paragraphs (a)(7)(i)(C)(1)(i) or (a)(7)(i)(C)(1)(iii) of this section, will be apportioned so that catcher/processor vessels using hook-and-line gear will receive 95 percent and vessels using pot gear will receive 5 percent of any such reallocation.

(iv) \* \* \*

(A) *Time periods.* NMFS, after consultation with the Council, may divide the directed fishing allowances allocated to vessels using hook-and-line or pot gear under paragraph (a)(7)(i)(C) of this section among the following three periods: January 1 through April 30, May 1 through August 31, and September 1 through December 31.

(B) \* \* \*

(C) *Unused seasonal allowances.* Any unused portion of a seasonal allowance of Pacific cod allocated to vessels using hook-and-line or pot gear under paragraph (a)(7)(i)(C) will be reallocated to the remaining seasons during the current fishing year in a manner determined by NMFS, after consultation with the Council.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(v) *Pacific cod* Any amounts of the BSAI nonspecific reserve that are apportioned to Pacific cod as provided by paragraph (b)(1)(ii) of this section must be apportioned among vessels using jig, hook-and-line or pot, and trawl gear in the same proportion specified in paragraph (a)(7)(i) of this section, unless the Regional Administrator determines under paragraph (a)(7)(ii) of this section that vessels using a certain gear type will not be able to harvest the additional amount of Pacific cod. In this case, the nonspecific reserve will be apportioned to vessels using the other gear type(s).

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