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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 151113999-6620-01]

RIN 0648-BF54

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; American Fisheries Act; Amendment 113

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 113 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). This proposed rule would modify the Bering Sea and Aleutian Islands (BSAI) Pacific cod fishery to set aside a portion of the Aleutian Islands Pacific cod total allowable catch for harvest by vessels directed fishing for Aleutian Islands Pacific cod and delivering their catch for processing to shoreside processors located on land west of 170 W. longitude in the Aleutian Islands (Aleutian Islands shoreplants). The harvest set-aside would apply only if specific notification and performance requirements are met, and only during the first few months of the fishing year. This harvest set-aside would provide the opportunity for vessels, Aleutian Islands shoreplants, and the communities where Aleutian Islands shoreplants are located to receive benefits from a portion of the Aleutian Islands Pacific cod fishery, while the notification and performance requirements would preserve an opportunity for the complete harvest of the BSAI Pacific cod resource should complications arise with participation in the harvest set-aside fishery. This

proposed rule is intended to promote the goals and objectives of Amendment 113, the FMP, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

DATES: Submit comments on or before August 31, 2016.

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2015-0155, by any one of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking portal. Go to www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2015-0155, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information voluntarily submitted by the commenter will be publicly accessible. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous).

Electronic copies of Amendment 113 to the FMP and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (collectively, Analysis) prepared for this action may be obtained from <http://www.regulations.gov> or from the Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted by mail to NMFS at the above address; emailed to OIRA_submission@omb.eop.gov; or faxed to 202-395-5806.

FOR FURTHER INFORMATION CONTACT: Julie Scheurer, 907-586-7228.

SUPPLEMENTARY INFORMATION:**Authority for Action**

NMFS manages the groundfish and Pacific cod fisheries in the Exclusive Economic Zone of the BSAI under the FMP. The North Pacific Fishery Management Council (Council) prepared, and the Secretary of Commerce approved, the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable laws. Regulations implementing the FMP appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at 50 CFR part 600.

The Council submitted Amendment 113 for review by the Secretary of Commerce. A notice of availability of Amendment 113 was published in the **Federal Register** on July 19, 2016, with comments invited through September 19, 2016. All relevant written comments received by that time, whether specifically directed to Amendment 113 or to this proposed rule, will be considered in the decision to approve or disapprove Amendment 113.

Background

This proposed rule would modify the BSAI Pacific cod fishery to set aside a portion of the Aleutian Islands Pacific cod total allowable catch (TAC) for harvest by vessels directed fishing for Aleutian Islands Pacific cod and delivering their catch to Aleutian Islands shoreplants for processing. The harvest set-aside would apply only if specific notification and performance requirements are met, and only during the first few months of the fishing year. The following sections of this preamble provide a description of (1) the BSAI Pacific cod fishery; (2) the need for the proposed rule; and (3) the proposed rule.

To aid the reader, the following glossary table (Table 1) lists the abbreviations, acronyms, and other technical terms most commonly used throughout this document. These terms are defined and discussed further in the following sections of this preamble.

TABLE 1—GLOSSARY OF TERMS, ABBREVIATIONS, AND ACRONYMS FREQUENTLY USED IN THIS PROPOSED RULE

ABC	acceptable biological catch.
AFA	American Fisheries Act.
AI	Aleutian Islands subarea (see definition in § 679.2).
BS	Bering Sea subarea (see definition in § 679.2).
BSAI	Bering Sea and Aleutian Islands Management Area (see definition in § 679.2).
CDQ	Western Alaska Community Development Quota.
Council	North Pacific Fishery Management Council.

TABLE 1—GLOSSARY OF TERMS, ABBREVIATIONS, AND ACRONYMS FREQUENTLY USED IN THIS PROPOSED RULE—
Continued

CP	catcher processor vessel.
CV	catcher vessel.
DFA	directed fishing allowance.
FMP	Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.
GHL	guideline harvest level.
ICA	incidental catch allowance.
LOA	length overall.
mt	metric ton.
NMFS	National Marine Fisheries Service.
OFL	overfishing level.
State	State of Alaska.
TAC	total allowable catch.

The BSAI Pacific Cod Fishery

Management of the BSAI Pacific Cod Fishery

Pacific cod (*Gadus macrocephalus*) is one of the most abundant and valuable groundfish species harvested in the BSAI. Vessels harvest Pacific cod using trawl and non-trawl gear. Non-trawl gear includes hook-and-line, jig, and pot gear. Vessels harvesting BSAI Pacific cod operate as catcher vessels (CVs) that harvest and deliver the fish for processing, or as catcher processors (CPs) that harvest and process the catch on board.

The FMP and its implementing regulations at § 679.20(c) require that, after consultation with the Council, NMFS specify an overfishing level (OFL), an acceptable biological catch (ABC), and a TAC for each target species or species group of groundfish, including Pacific cod, on an annual basis. The OFL is the level above which overfishing is occurring for a species or species group. The ABC is the level of a species' or species group's annual catch that accounts for the scientific uncertainty in the estimate of OFL, and any other scientific uncertainty. Under the FMP, the ABC is set below the OFL. The TAC is the annual catch target for a species or species group, derived from the ABC by considering social and economic factors and management uncertainty, and in the case of BSAI Pacific cod, after considering any harvest allocations for guideline harvest level (GHL) fisheries managed by the State of Alaska (State) and occurring within State waters. Under the FMP, the TAC must be set lower than or equal to the ABC.

The OFLs, ABCs, and TACs for BSAI groundfish are specified through the annual harvest specification process. A detailed description of the annual harvest specification process is provided in the final 2016 and 2017 harvest specifications for groundfish of the BSAI (81 FR 14773, March 18, 2016). The annual harvest specification

process for BSAI Pacific cod is briefly summarized here. Specific examples of Pacific cod OFLs, ABCs, TACs, and other apportionments of Pacific cod used in this preamble are based on the 2017 specifications from the final 2016 and 2017 harvest specifications for groundfish of the BSAI unless otherwise noted.

For Pacific cod, the harvest specifications establish an OFL, ABC, and TAC for the Bering Sea subarea (Bering Sea) of the BSAI, and a separate OFL, ABC, and TAC for the Aleutian Islands subarea (Aleutian Islands) of the BSAI. Before the Pacific cod TACs are established, the Council and NMFS consider social and economic factors, and management uncertainty, as well as two factors that are particularly relevant to BSAI Pacific cod: Pacific cod GHL fisheries that occur in the State waters of the BSAI, and an overall limit on the maximum amount of TAC that can be specified for BSAI groundfish.

Currently, the State manages two GHL fisheries for Pacific cod, one that occurs within State waters in the Bering Sea and one that occurs within State waters in the Aleutian Islands. Under current State regulations, each year the Bering Sea GHL fishery is limited to no more than 6 percent of the ABC specified for Pacific cod in the Bering Sea. The Aleutian Islands GHL fishery is limited to no more than 27 percent of the ABC specified for Pacific cod in the Aleutian Islands beginning in 2016, with annual "step-up" provisions that increase the amount of the GHL fishery if it was fully harvested in the previous year. The Aleutian Islands GHL fishery can increase to a maximum of 39 percent of the Aleutian Islands ABC or to a maximum of 15 million pounds (6,804 mt), whichever is less. Section 2.6.3 of the Analysis provides additional description of the GHL fisheries in the BSAI. Pacific cod TACs are specified at reduced levels that take into account the GHL fisheries so that the combined harvest limits from GHL fisheries and

the TACs do not exceed the ABCs specified for the Bering Sea or Aleutian Islands.

The Council and NMFS also consider requirements under the FMP and regulations that limit the optimum yield for BSAI groundfish. The FMP and regulations establish 2.0 million metric tons (mt) as the maximum optimum yield of all BSAI groundfish species combined (Section 3.2.2.2 of the FMP and § 679.20(a)(1)). Under this requirement, the sum of the TACs for all groundfish species in the BSAI must be specified within the optimum yield range of 1.4 million to 2.0 million mt (see § 679.20(a)(1)(i)). Typically, NMFS specifies TACs for all BSAI groundfish that total to 2 million mt, even though summed ABCs for all BSAI groundfish species can exceed the upper limit of the optimum yield range. For example, in 2016, the total ABCs for all BSAI groundfish of 3.24 million mt substantially exceeded the 2 million mt limit for BSAI groundfish (81 FR 14773, March 18, 2016). However, the Council recommended and NMFS implemented TACs that equaled 2 million mt for all BSAI groundfish to ensure the 2 million mt optimum yield limit was not exceeded (81 FR 14773, March 18, 2016).

In 2016, the Pacific cod TACs for the Bering Sea and Aleutian Islands were reduced from their maximum permissible limits (*i.e.*, when the TAC is set equal to ABC) to accommodate the GHL fisheries and the 2 million mt limit on BSAI groundfish TACs. The combined ABCs for Pacific cod totaled 272,600 mt, and the combined TACs totaled 251,519 mt (81 FR 14773, March 18, 2016).

Once the TACs are established, regulations at § 679.20(a)(7)(i) allocate 10.7 percent of the Bering Sea Pacific cod TAC and 10.7 percent of the Aleutian Islands Pacific cod TAC to the Community Development Quota (CDQ) Program for the exclusive harvest by Western Alaska CDQ groups. Section

305(i) of the Magnuson-Stevens Act authorizes 65 communities organized into six nonprofit corporations called CDQ groups to receive exclusive harvest privileges of groundfish, including Pacific cod. Section 305(i) of the Magnuson-Stevens Act specifies the methods for allocating these harvest privileges. Once allocated, CDQ groups must ensure that they do not exceed their allocations. Section 2.6.1 of the Analysis provides additional detail on

the CDQ Program and allocations to the CDQ groups.

After subtraction of the CDQ allocation from each TAC, NMFS combines the remaining Bering Sea and Aleutian Islands TACs into one BSAI non-CDQ TAC, which is available for harvest by nine non-CDQ fishery sectors. Regulations at § 679.20(a)(7)(ii)(A) define the nine Pacific cod non-CDQ fishery sectors in the BSAI and specify the percentage allocated to each. The non-CDQ fishery sectors are defined by a combination of

gear type (*e.g.*, trawl, hook-and-line), operation type (*i.e.*, CV or CP), and vessel size categories (*e.g.*, vessels greater than or equal to 60 ft in length overall). Through the annual harvest specifications process, NMFS allocates an amount of the combined BSAI non-CDQ TAC to each of these nine non-CDQ fishery sectors. The nine non-CDQ fishery sectors and the percentage of the combined BSAI non-CDQ TAC allocated to each sector are shown in Table 2 of this preamble.

TABLE 2—ALLOCATIONS OF THE COMBINED BSAI NON-CDQ TAC TO THE NON-CDQ FISHERY SECTORS

Non-CDQ fishery sector	Percentage allocation of the combined BSAI non-CDQ TAC
Hook-and line catcher vessels greater than or equal to 60 ft (18.3 m) length overall (LOA)	0.2
Jig gear	1.4
Pot catcher processors	1.5
Hook-and-line and pot catcher vessels less than 60 ft LOA	2.0
American Fisheries Act (AFA) trawl catcher processors	2.3
Pot catcher vessels greater than or equal to 60 ft LOA	8.4
Non-AFA trawl catcher processors (Amendment 80 CPs)	13.4
Trawl catcher vessels	22.1
Hook-and-line catcher processors	48.7

NMFS manages each of the non-CDQ fishery sectors to ensure harvest of Pacific cod does not exceed the overall annual allocation made to each of the non-CDQ fishery sectors. NMFS monitors harvests that occur while vessels are directed fishing for Pacific cod (specifically targeting and retaining Pacific cod above specific threshold levels) and harvests that occur while vessels are directed fishing in other fisheries and incidentally catching Pacific cod (*e.g.*, the incidental catch of Pacific cod in the directed pollock fishery). Section 679.2 provides the regulatory definition of “directed fishing.” For the non-AFA trawl CP sector, also known as the Amendment 80 sector, NMFS allocates exclusive harvest privileges to non-CDQ fishery participants that cannot be exceeded. For other non-CDQ fishery sectors, NMFS carefully tracks both directed and incidental catch of Pacific cod. NMFS takes appropriate management measures, such as closing directed fishing for a non-CDQ fishery sector, to ensure that total directed fishing and incidental fishing harvests do not exceed that sector’s allocation. Section 2.6.6 of the Analysis describes NMFS’ management of the non-CDQ fishery sectors.

An allocation to a non-CDQ fishery sector may be harvested in either the Bering Sea or the Aleutian Islands, subject to the non-CDQ Pacific cod TAC specified for the Bering Sea or the Aleutian Islands. If the non-CDQ Pacific cod TAC is or will be reached in either the Bering Sea or Aleutian Islands, NMFS will prohibit directed fishing for Pacific cod in that subarea for all non-CDQ fishery sectors (see § 679.20(d)(1)(iii)).

Allocations of Pacific cod to the CDQ Program and to the non-CDQ fishery sectors are further apportioned by seasons. Season dates for the CDQ and non-CDQ fishery sectors are established at § 679.23(e)(5). In general, regulations apportion CDQ and non-CDQ fishery sector allocations among three seasons that correspond to the early (A-season), middle (B-season), and late (C-season) portions of the year. The specific seasonal dates established for the CDQ Program and each of the non-CDQ fishery sectors are provided in the final 2016 and 2017 harvest specifications for groundfish of the BSAI (81 FR 14773, March 18, 2016). Depending on the specific CDQ Program or non-CDQ fishery sector allocation, between 40 percent and 70 percent of the Pacific cod allocation is apportioned to the A-

season, historically the most lucrative fishing season due to the presence of valuable roe in the fish and the good quality of the flesh during that time of year.

The allocation of Pacific cod among the CDQ Program and the nine non-CDQ fishery sectors, as well as the seasonal apportionment of those allocations, create a large number of separate sectoral-seasonal allocations. To help ensure the efficient management of these allocations, regulations allow NMFS to reallocate (rollover) any unused portion of a seasonal apportionment from any non-CDQ fishery sector (except the jig sector) to that sector’s next season during the current fishing year, unless the Regional Administrator determines a non-CDQ fishery sector will not be able to harvest its allocation (see § 679.20(a)(7)(iv)(B)).

The 2017 ABCs, OFLs, TACs, CDQ and non-CDQ fishery sector allocations, and seasonal apportionments of BSAI Pacific cod are shown in Table 3 of this preamble. Table 3 of this preamble includes data from Tables 2 and 9 in the 2016 and 2017 final harvest specifications for the BSAI groundfish fisheries (81 FR 14773, March 18, 2016).

TABLE 3—PACIFIC COD OFL, ABC, AND TAC SPECIFICATIONS IN THE BSAI FOR 2017

Description of OFL, ABC, and TAC specification process		2017 Management area and allocation amount (in metric tons)		
		Bering Sea	Aleutian Islands	BSAI
Specification of separate BS and AI OFLs, ABCs.	OFL	412,000	23,400	N/A.
	ABC	255,000	17,600	N/A.
Specification of TAC (considers GHL fisheries and 2.0 million mt limit).	TAC	238,680	12,839	N/A.
CDQ Allocation of 10.7% of the TAC	CDQ	25,539	1,374	N/A.
Seasonal Apportionment of CDQ Allocation.	CDQ Seasonal Apportionment	Season allocations are established depending on specific gear type used (See § 679.20(a)(7)(i)(B)).		N/A.
Non-CDQ TAC (89.3% of the TAC) for each.	Non-CDQ TAC	213,141	11,465	224,606.
Allocation of the combined BSAI non-CDQ TAC to each of the non-CDQ fishery sectors, and the seasonal apportionment of that allocation.	Hook-and line catcher vessels greater than or equal to 60 ft LOA.	N/A	N/A	A season: 228. B season: 219.
	Jig gear	N/A	N/A	A season: 1,887. B season: 629. C season: 629.
	Pot catcher processors	N/A	N/A	A season: 1,712. B season: 1,645. All Year: 4,476.
	Hook-and-line and pot catcher vessels less than 60 ft LOA.	N/A	N/A	
	AFA trawl catcher processors	N/A	N/A	A season: 3,874. B season: 1,291. C season: 0.
	Pot catcher vessels greater than or equal to 60 ft LOA.	N/A	N/A	A season: 9,587. B season: 9,211.
	Non-AFA trawl catcher processors (Amendment 80 CPs).	N/A	N/A	A season: 22,573. B season: 7,524. C season: 0.
	Trawl catcher vessels	N/A	N/A	A season: 36,732. B season: 5,460. C season: 7,446.
	Hook-and-line catcher processors	N/A	N/A	A season: 55,581. B season: 53,402. C season: 228.

Harvesting and Processing of Pacific Cod in the Aleutian Islands

A variety of vessels using a variety of gear types harvest the Aleutian Islands Pacific cod TAC. Trawl CV and trawl CP vessels have been among the most active participants in the Aleutian Islands Pacific cod fishery. The trawl CV fishery sector harvested 55 percent of the Pacific cod from the Aleutian Islands on an average annual basis during 2003 through 2015 (Table 2–17 of the Analysis), while trawl CP sectors, which include the AFA and the Amendment 80 fishery sectors, harvested 29 percent of the Pacific cod from the Aleutian Islands on an average annual basis during 2003 through 2015 (Table 2–10 of the Analysis). The hook-and-line CP sector is the only other sector that has consistently participated in the Aleutian Islands Pacific cod fishery annually. The hook-and-line CP sector harvested 14 percent of the Pacific cod from the

Aleutian Islands on an average annual basis during 2003 through 2015 (Table 2–13 of the Analysis). Non-trawl CVs have harvested only a very small portion of the Pacific cod from the Aleutian Islands: approximately 2 percent of the Pacific cod harvest on an average annual basis during 2003 through 2015 (Table 2–20 of the Analysis). Section 2.6.6 of the Analysis provides additional detail on harvesting in the Aleutian Islands.

Trawl CVs deliver their catch of Aleutian Islands Pacific cod to several types of processors in the Aleutian Islands. Some trawl CVs deliver their catch to CPs for processing on board the CP. In this situation, the CP is acting as a mothership. These CPs also harvest and process their own catch of Aleutian Islands Pacific cod. Some trawl CVs deliver their catch to stationary floating processors anchored in specific locations that receive and process catch

on board but do not harvest and process their own catch. Some trawl CVs deliver their catch to shoreside processing facilities that are physically located on land within the Aleutian Islands; these facilities are defined as “Aleutian Islands shoreplants” in this proposed rule.

Currently, Aleutian Islands shoreplants are located in the communities of Adak and Atka, and these shoreplants can receive deliveries of Pacific cod from CVs. Although the Atka shoreplant has not received and processed Aleutian Islands Pacific cod, the shoreplant in Adak has received and processed relatively large amounts of Pacific cod. The vast majority of Aleutian Islands Pacific cod delivered to the Adak shoreplant comes from catch harvested by trawl CVs (Table 2–32 of the Analysis). The percentage of total Aleutian Islands Pacific cod processed by Aleutian Islands shoreplants has

been highly variable, ranging from 0 to 49 percent since 2003 (Table 2–31 of the Analysis). From 2003 through June 2015, the Adak shoreplant has received an annual average of approximately 25 percent of the Aleutian Islands Pacific cod harvest (Table 2–31 of the Analysis). Relatively small amounts of Pacific cod harvested in the Aleutian Islands have also been delivered to shoreplants located outside the Aleutian Islands, on average less than 1 percent of the total amount of Aleutian Islands Pacific cod harvested from 2003 through June 2015. Section 2.7.1 of the Analysis has additional detail on the delivery and processing of Aleutian Islands Pacific cod.

Harvesting and Processing in Adak

The development of a local CV fleet has long been a goal of the local leadership in Adak, but currently the number of locally owned or locally operated CVs is limited. A variety of programs have been implemented to encourage economic opportunities for local CVs and processing operations. Some of these programs include the allocation of the Aleutian Islands pollock TAC to the Aleut Corporation, an Alaska Native tribal organization that represents specific community interests in Adak (70 FR 9856; March 1, 2005), allocations of Western Aleutian Islands golden king crab to the Adak Community Development Corporation under the BSAI Crab Rationalization Program (70 FR 10174; March 2, 2005), and the establishment of a Community Quota Entity Program in the Aleutian Islands that provides additional fishing opportunities for residents of fishery dependent communities in the Aleutian Islands and sustains participation in the halibut and sablefish IFQ fisheries (79 FR 8870; February, 14, 2014). Adak also acts as a port of embarkation and disembarkation for personnel on board CPs and CVs harvesting groundfish in the Aleutian Islands.

Despite only having a small local CV fleet, Adak has a substantial degree of engagement in the Aleutian Islands Pacific cod fishery. Adak is home to a large shoreplant. Pacific cod is the primary species delivered to and processed at the Adak shoreplant. The Adak shoreplant has the capability to process one million round pounds (454 mt) of Pacific cod daily. When operational, the Adak shoreplant primarily receives and processes Pacific cod harvested from January through March, the period corresponding to the A season. Processing revenue from the A-season Aleutian Islands Pacific cod fishery has been the main source of income for the Adak shoreplant (and the

primary source of raw fish tax revenue for the City of Adak). The processing of A-season Aleutian Islands Pacific cod has historically accounted for approximately 75 percent of the Adak shoreplant's revenue. The Adak shoreplant has not been operated continuously over the last decade. In some years, the facility has not received any deliveries of groundfish, crab, or halibut due to a variety of operational and logistical challenges, as well as changes in fishery management measures. Section 2.6.8 of the Analysis provides additional detail on Adak shoreplant processing operations.

Harvesting and Processing in Atka

Vessels operating out of Atka participate in halibut fisheries, and receive groundfish allocations through the Aleutian Pribilof Island Community Development Association (APICDA) CDQ group. As a member of APICDA, Atka benefits from CDQ shares in a number of commercial fisheries, including Pacific cod. In 2016, APICDA received an allocation of 15 percent, or 193 mt, of the Aleutian Islands CDQ Pacific cod allocation, as well as allocations of halibut, crab, and other Aleutian Islands groundfish (See the 2016 CDQ Program allocation matrix available at <https://alaskafisheries.noaa.gov/sites/default/files/reports/annualmatrix2016.pdf>).

The Atka shoreplant primarily processes halibut and sablefish. The local commercial fleet primarily harvests halibut, with limited harvests of sablefish. However, the community and processor have made substantial infrastructure investments to make the shoreplant a year-round operation with the capacity to process Pacific cod. Once completed, the processing capacity of the Atka shoreplant is anticipated to be approximately 400,000 round pounds (181 mt) of Pacific cod per day. Section 2.6.8 of the Analysis provides additional detail on Atka shoreplant processing operations.

Since 2008, trawl CVs have primarily delivered their catch of Aleutian Islands Pacific cod to a small group of CPs that operate as motherships (processing Pacific cod delivered by trawl CVs). As deliveries of Aleutian Islands Pacific cod harvest from trawl CVs to CPs has increased in recent years, the amount of trawl CV harvest delivered to Aleutian Islands shoreplants has decreased. From 2003 through 2007, an average of 69 percent of the annual trawl CV harvest of Aleutian Islands Pacific cod was delivered to Aleutian Islands shoreplants (see Table 2–32 of the Analysis), with the remainder of the harvest delivered to CPs acting as

motherships or to stationary floating processors. From 2008 through June 2015, an average of 34 percent of the annual trawl CV harvest of Aleutian Islands Pacific cod was delivered to Aleutian Islands shoreplants, with the remainder of the harvest delivered to CPs acting as motherships or to stationary floating processors (see Table 2–32 of the Analysis). Even if 2011 and 2015 (the years when the Aleutian Islands shoreplants were not operational) are removed from consideration, an average of 45 percent of the annual trawl CV harvest of Aleutian Islands Pacific cod was delivered to Aleutian Islands shoreplants from 2008 through June 2015, a reduction of approximately 35 percent in the annual average between 2003 and 2007. Additionally, CPs have demonstrated the capacity to process the entire harvest of Pacific cod in the Aleutian Islands in years when no Aleutian Islands shoreplant is in operation. This proposed rule is intended in part to mitigate the risk that vessels, Aleutian Islands shoreplants, and the communities in which they are located will be preempted from participating in the Aleutian Islands Pacific cod fishery.

Section 2.6 of the Analysis provides additional description of the factors that have affected the harvesting and processing of Pacific cod in the Aleutian Islands.

Need for This Proposed Rule

In 2008, the Council began to examine the need for processing sideboards for processing vessels operating in the Aleutian Islands. As the Council considered this issue over the next several years, it recognized that several other management actions under consideration by the Council might greatly affect any action to modify the Aleutian Islands Pacific cod fishery.

Since 2008, Aleutian Islands fishing communities, and specifically the community of Adak and its shoreplant, have lost their historical place in the Pacific cod fishery. The amount of Pacific cod being delivered to Aleutian Islands shoreplants has been highly variable and vulnerable, which is not conducive to stable shoreside operations. Several factors have contributed to this instability, and therefore the need for this proposed action, including decreased Pacific cod biomass in the Aleutian Islands subarea; the establishment of separate OFLs, ABCs, and TACs for Pacific cod in the Bering Sea and the Aleutian Islands (referred to as the “BSAI TAC split”); changing Steller sea lion protection measures; and changing fishing

practices in part resulting from rationalization programs.

By October 2013, decisions on some of these other management actions were completed, and the Council again considered modifications to the Aleutian Islands Pacific cod fishery at its February 2014 meeting. After receiving recommendations from the Council's Advisory Panel and testimony from the public, the Council developed a suite of alternatives and options for consideration. The Council adopted its preferred alternative for Amendment 113 at its October 2015 meeting.

BSAI Pacific Cod Biomass Estimates and TAC Split

Pacific cod biomass in the Aleutian Islands declined steadily from about 2000 until 2014 (see Section 3.3 of the Analysis), although the stock assessment in 2015 indicated some stabilization. Prior to 2011, the Pacific cod stock assessment model for the BSAI had been based on an abundance estimate from the eastern Bering Sea that was expanded to the entire BSAI. In 2011, based on information that the proportion of the combined BSAI biomass in the Aleutian Islands subarea might be smaller than previously estimated, the Council requested a stock assessment specific to Pacific cod in the Aleutian Islands subarea. Prior to the Aleutian Islands-specific stock assessment, approximately 16 percent of the Pacific cod biomass was attributed to the Aleutian Islands; however, the stock assessment revealed that the actual distribution was in the 7 to 9 percent range. After considering the combined effects of a declining Aleutian Islands biomass of Pacific cod, revisions to the stock assessment, and the proportion of the stock attributed to the Aleutian Islands, the Council recommended splitting the BSAI Pacific cod TAC between the two subareas. See Section 3.3 of the Analysis for more information about the BSAI TAC split. The declining biomass, revised stock assessment, and BSAI TAC split resulted in a substantial decrease in the TAC available for harvest in the Aleutian Islands.

Steller Sea Lion Protection Measures

The western distinct population segment of Steller sea lions was listed as threatened under the Endangered Species Act in 1990 (55 FR 49204, November 26, 1990), and reclassified as endangered in 1997 (62 FR 30772, June 5, 1997). Since then, NMFS has restricted fishing with trawl gear near Steller sea lion rookeries and managed fisheries to limit and disperse harvest in important Steller sea lion foraging areas.

In 2011, NMFS increased the areas of closure for directed fishing for Pacific cod in the western Aleutian Islands to ensure the fisheries were not likely to jeopardize the continued existence of the western distinct population segment of Steller sea lions or adversely modify their designated critical habitat. These protection measures reduced harvest opportunities for Pacific cod in the Aleutian Islands, shifting more fishing effort to the Bering Sea, which contributed to the decline in deliveries of Pacific cod to Aleutian Islands shoreplants.

In 2014, NMFS implemented new Steller sea lion protection measures in the Aleutian Islands (79 FR 70286, November 25, 2014) that are less restrictive than the measures previously in place; however, in that year NMFS also split the BSAI TAC into separate TACs for the Bering Sea and Aleutian Islands subareas. While the BSAI TAC split greatly reduced the potential impacts of the Pacific cod fisheries on Steller sea lion Pacific cod prey resources, it also resulted in a substantial reduction in the amount of Pacific cod available for harvest in the Aleutian Islands. Consequently, implementation of the less restrictive Steller sea lion protection measures in 2014 did not improve opportunities for deliveries of Pacific cod to shoreside processors that support communities in the Aleutian Islands, given the effects of the BSAI split.

Additional information about the effects of Steller sea lion protection measures on the Aleutian Islands Pacific cod fishery and Aleutian Islands communities is available in Section 3.3 of the EIS prepared for the Steller sea lion protection measures (Available at <https://alaskafisheries.noaa.gov/fisheries/sslpm-feis>) and in Section 2.6.5 of the Analysis prepared for this proposed rule.

Rationalization Programs

Some of the recent decline in processing of Aleutian Islands Pacific cod by Aleutian Islands shoreplants is likely due to the reduction in Aleutian Islands Pacific cod biomass, the BSAI TAC split, and Steller sea lion protection measures, but changes in fishing behavior by the offshore sector, starting with the implementation of two types of rationalization programs in 2008, has also contributed to the decline in Aleutian Islands Pacific cod delivered and processed at Aleutian Islands shoreplants. In 2008, both Amendment 80 and Amendment 85 were implemented. Amendment 80 provided an allocation of the TACs for six groundfish species, including Pacific

cod, to facilitate the development of cooperative arrangements among the eligible non-pelagic trawl CPs, thus allowing opportunities for consolidation within the Amendment 80 sector and allowing for increased processing participation by the sector in other fisheries such as Aleutian Islands Pacific cod. Amendment 85 reduced the allocation of BSAI Pacific cod to trawl sectors from 47 percent to 37.8 percent and further apportioned the BSAI Pacific cod allocation among the different trawl sectors.

As a result of the implementation of Amendment 80 and Amendment 85, the fishing behavior for the trawl sectors changed in the Aleutian Islands Pacific cod fishery. Section 2.7.1 of the Analysis shows that prior to 2008, a majority of the Aleutian Islands Pacific cod processed by the offshore sector came from CP harvest, but after 2008, CV deliveries of Aleutian Islands Pacific cod to CPs played a more significant role in the offshore processing. The percentage of the total CV deliveries of Aleutian Islands Pacific cod to shoreplants decreased from an annual average of 69 percent prior to 2008, to an annual average of 34 percent since 2008, with the remainder being delivered to the offshore sector (motherships and floating processors). Before Amendment 80 to the FMP was implemented in 2008, between 3 and 6 percent of the total BSAI Pacific cod landings were made at Adak. However, since 2012, the share of total BSAI Pacific cod landings made at Adak has been 1 to 2 percent. The flexibility of Amendment 80 likely afforded the offshore sector the ability to change its fishing behavior in the Aleutian Islands Pacific cod fishery to lessen the impacts of Amendment 85, a lower Aleutian Islands Pacific cod biomass, and the BSAI Pacific cod TAC split. When compared to the offshore sector, the Aleutian Islands shoreplants have little ability to change their behavior to reduce the impacts resulting from a lower Aleutian Islands Pacific cod biomass and the BSAI Pacific cod TAC split, since the Aleutian Islands shoreplants rely entirely on CV deliveries of Aleutian Islands Pacific cod. This disparity in flexibility between the offshore sector and Aleutian Islands shoreplants leaves the Aleutian Islands shoreplants at a significant disadvantage in adapting to changes in the Aleutian Islands Pacific cod fishery.

Rationale for Action

Generally, this proposed rule would establish a harvest set-aside in which a portion of the Aleutian Islands Pacific

cod TAC would be available for harvest only by vessels directed fishing for Aleutian Islands Pacific cod and delivering their catch to Aleutian Islands shoreplants for processing. The harvest set-aside would apply only if specific notification and performance requirements are met, and only during the first few months of the fishing year. A detailed description of this proposed rule is provided in the following section of the preamble.

The Council determined and NMFS agrees that a harvest set-aside is needed for several reasons. First, the Council acknowledged that the TAC for Aleutian Islands Pacific cod was significantly lower than predicted. Second, the rationalization programs, and particularly the Amendment 80 Program, have allowed an influx of processing capacity into the Aleutian Islands Pacific cod fishery capable of processing the Aleutian Islands Pacific cod TAC, exacerbating the need for Council action to support Aleutian Islands fishing communities. The Council determined that without Council action, there would be a continued risk that fishing communities, and particularly Aleutian Islands shoreplants and the communities in which they are located, would not be able to sustain participation in the Aleutian Islands Pacific cod fishery. This proposed rule would maintain opportunities for remote fishing communities to participate in the Pacific cod fishery. Third, the Council recognized that multiple sectors have historically participated in the Aleutian Islands Pacific cod fishery, but for the CP sectors, the Aleutian Islands Pacific cod fishery contributed only 1 to 3 percent of total first wholesale gross revenue in recent years, compared to the shoreplants (Adak), where almost all of their total first wholesale gross revenue was from Aleutian Islands Pacific cod during the same period.

This proposed rule would strike a balance between providing fishing community protections and ensuring that the fishery sectors have a meaningful opportunity to fully harvest their allocations by including several thresholds to prevent Aleutian Islands Pacific cod from being unharvested. This proposed rule would provide benefits and stability to fishery-dependent fishing communities in the Aleutian Islands and is responsive to changes in management regimes like rationalization programs that necessitate putting protections in place to protect other non-rationalized fisheries.

The Council also stressed that this proposed rule would not affect any

sector's BSAI Pacific cod allocation or the CDQ Pacific cod allocation in the Aleutian Islands. Non-CDQ sectors would continue to receive the allocations established under Amendment 85.

The Council recognized that neither of the existing Aleutian Islands shoreplants is currently processing Aleutian Islands Pacific cod. However, the Council also recognized that the protection measures and harvest set-aside in this proposed rule would minimize the risk of exclusion from, and maintain opportunities for participation in, the Aleutian Islands Pacific cod fishery by Aleutian Islands harvesters, processors, and communities.

This proposed rule would revise regulations to provide additional opportunities for harvesters to deliver Aleutian Islands Pacific cod to Aleutian Islands shoreplants. The Aleutian Islands Pacific cod TAC is not sufficient to allow all sectors to prosecute the Aleutian Islands Pacific cod fishery at their historical levels. Without protections, Aleutian Islands harvesters, shoreplants, and fishing communities could be preempted from the fishery by the offshore sector. This proposed action would create a set aside for vessels delivering to shoreplants, especially in low TAC years.

This proposed rule is intended to provide benefits to harvesters delivering to Aleutian Islands shoreplants, the shoreplants, and the communities where those shoreplants are located. This objective is consistent with long-standing policies recommended by the Council and regulations established by NMFS to provide harvesting and processing opportunities for communities in the Aleutian Islands.

Because of their remote location and limited economic alternatives, Aleutian Islands communities rely on harvesting and processing of the nearby fishery resources to support and sustain their communities. This proposed rule is intended to be directly responsive to National Standard 8 of the Magnuson-Stevens Act that states conservation and management measures shall take into account the importance of fishery resources to fishing communities in order to provide for the sustained participation of such communities, and to the extent practicable, minimize adverse economic impacts on such communities (16 U.S.C. 1851(a)(8)). Additional information on the history leading up to this proposed action and the Council's purpose and need statement are provided in Sections 2.3 and 2.2 of the Analysis, respectively.

The following section of this preamble describes how this proposed rule would revise management of the BSAI Pacific cod fishery to provide harvesting and delivery opportunities for Aleutian Islands communities, while considering and accommodating the harvesting and delivery patterns and needs of other participants in the BSAI Pacific cod fishery.

The Proposed Rule

This proposed rule would modify several aspects of the BSAI Pacific cod fishery. This proposed rule would set aside a portion of the Aleutian Islands Pacific cod non-CDQ TAC for harvest by vessels directed fishing for Aleutian Islands Pacific cod for processing by Aleutian Islands shoreplants. However, the harvest set-aside would apply only if specific notification and performance requirements are met, and only during the first few months of the fishing year.

In order to implement Amendment 113, this proposed rule would:

- Define the term "Aleutian Islands shoreplant" in regulation;
- Calculate and define the amount of the Aleutian Islands Pacific cod TAC that would be available as a directed fishing allowance (DFA) and the amount that would be available as an incidental catch allowance (ICA);
- Limit the amount of A-season Pacific cod that could be harvested by the trawl CV sector in the Bering Sea prior to March 21 (Bering Sea Trawl CV A-Season Sector Limitation);
- Set aside some or all of the Aleutian Islands Pacific cod non-CDQ DFA for harvest by vessels directed fishing for Aleutian Islands Pacific cod for processing by Aleutian Islands shoreplants from January 1 to March 15 (Aleutian Islands CV Harvest Set-Aside);
- Require that either the City of Adak or the City of Atka annually provide notification to NMFS prior to November 1 of its intent to process Aleutian Islands Pacific cod during the upcoming fishing year in order for the Aleutian Islands CV Harvest Set-Aside and the Bering Sea Trawl CV A-Season Sector Limitation to be effective in the upcoming fishing year; and
- Remove the Bering Sea Trawl CV A-Season Sector Limitation and the Aleutian Islands CV Harvest Set-Aside if less than 1,000 mt of the harvest set-aside is delivered to (*i.e.*, landed at) Aleutian Islands shoreplants by February 28, or if the harvest set-aside is fully taken before March 15.

The following sections provide greater detail about the rationale for and effect of the regulatory changes proposed in this rule.

Proposed Revisions to Definitions at § 679.2

This proposed rule would add a definition to § 679.2 for “Aleutian Islands shoreplant” to mean a processing facility that is physically located on land west of 170° W. longitude within the State of Alaska. This proposed definition is needed because the existing term “shoreside processor” in § 679.2 can include processing vessels that are moored or otherwise fixed in a location (*i.e.*, stationary floating processors), but not necessarily located on land. The objective of this proposed rule is to provide an opportunity for fishing communities in the Aleutian Islands, including the processors that are physically located in Aleutian Islands communities, to receive benefits from the Aleutian Islands Pacific cod fishery at levels that are roughly equivalent to the historic share of Aleutian Islands Pacific cod that was harvested by CVs and delivered to Aleutian Islands shoreplants for processing. Given that the definition of shoreside processor does not exclude stationary floating processors, and stationary floating processors do not benefit or provide stability to nearby communities to the same extent as shoreplants, this proposed definition would provide a clear and consistent term for referencing the shoreside processors located on land within the Aleutian Islands.

Proposed Revisions to General Limitations at § 679.20

This proposed rule would add a new paragraph (viii) to § 679.20(a)(7). This new paragraph would include the primary regulatory provisions of this proposed rule. To aid the reader in understanding how this proposed rule would apply, NMFS provides examples of the proposed Aleutian Islands CV Harvest Set-Aside, harvest limitations, and performance measures in this section of the preamble using 2017 harvest specifications for BSAI Pacific cod (81 FR 14773, March 18, 2016). For the remainder of this preamble, unless otherwise specified, all references refer to non-CDQ allocations and apportionments of BSAI Pacific cod.

Calculation of the Aleutian Islands Pacific Cod Non-CDQ Incidental Catch Allowance and Directed Fishing Allowance

This proposed rule would require that NMFS annually specify an ICA and a DFA derived from the Aleutian Islands non-CDQ TAC. Each year, during the annual harvest specifications process described at § 679.20(c), NMFS would

specify an amount of Aleutian Islands Pacific cod that NMFS estimates will be taken as incidental catch when directed fishing for non-CDQ groundfish other than Pacific cod in the Aleutian Islands. This amount would be the Aleutian Islands ICA and would be deducted from the Aleutian Islands non-CDQ TAC. The amount of the Aleutian Islands non-CDQ TAC remaining after subtraction of the Aleutian Islands ICA would be the Aleutian Islands DFA.

NMFS would specify the Aleutian Islands ICA and DFA so that NMFS could clearly establish the amount of Aleutian Islands Pacific cod that would be used in determining the amount of the harvest set-aside described in the following sections of this preamble. It would also aid the public in knowing how much of the Aleutian Islands non-CDQ TAC is available for directed fishing prior to the start of fishing to aid in the planning of fishery operations.

Although the amount of the Aleutian Islands ICA may vary from year to year, NMFS anticipates that an Aleutian Islands ICA of 2,500 mt likely would be needed to support incidental catch of Pacific cod in other Aleutian Islands non-CDQ directed groundfish fisheries. NMFS examined recent levels of incidental catch of Pacific cod in other Aleutian Islands non-CDQ groundfish fisheries from 2013 through 2015, and has initially determined that 2,500 mt should adequately account for incidental catch if Amendment 113 is approved and implemented. In future years, NMFS would specify the Aleutian Islands ICA in the annual harvest specifications based on recent and anticipated incidental catch of Aleutian Islands Pacific cod in other Aleutian Islands non-CDQ directed groundfish fisheries.

Using the 2017 Aleutian Islands non-CDQ TAC from Table 3 (11,465 mt), and assuming an Aleutian Islands ICA of 2,500 mt, the 2017 Aleutian Islands DFA would equal 8,965 mt (11,465 mt – 2,500 mt = 8,965 mt). Under this proposed rule, the Aleutian Islands DFA would be the maximum amount of Pacific cod available for directed fishing by all non-CDQ fishery sectors in all seasons in the Aleutian Islands.

Bering Sea Trawl CV A-Season Sector Limitation

As noted earlier in this preamble, trawl CVs harvest almost all of the Aleutian Islands Pacific cod that is received for processing by Aleutian Islands shoreplants. Additionally, the trawl CV sector can harvest its entire allocation of BSAI Pacific cod in the Bering Sea, and in recent years has harvested its A-season BSAI Pacific cod

allocation very early in the A season. In the Bering Sea, the fishery starts in earnest on January 20, with a peak in fishing around mid-February, followed by a slow decline in catch during March. In the Aleutian Islands, the season is significantly shorter, with fishing effort ramping up during the last two weeks in February and peaking in early March, followed by a dramatic decline in mid-March. The Pacific cod fishery in the Aleutian Islands starts later than in the Bering Sea in part because of when Pacific cod aggregate in the Aleutian Islands, allowing efficient harvest by trawl vessels. Because the trawl CV sector can harvest its entire A-season allocation in the Bering Sea and can harvest it very quickly, there may be no Pacific cod available for harvest during the A-season in the Aleutian Islands. Setting aside an amount of the BSAI trawl CV sector A-season allocation for harvest and delivery in the Aleutian Islands would provide the opportunity for vessels, Aleutian Islands shoreplants, and the communities where Aleutian Islands shoreplants are located to receive benefits from a portion of the BSAI Pacific cod fishery.

In recent years, the trawl CV sector has harvested its A-season BSAI Pacific cod allocation very quickly, primarily because the trawl CV sector has been able to harvest almost its entire BSAI Pacific cod allocation in the Bering Sea. For example, in 2014, NMFS closed the trawl CV sector to directed fishing on March 16 (79 FR 15255; March 19, 2014). In 2015, NMFS closed the trawl CV sector to directed fishing on February 27 (80 FR 11332; March 3, 2015). This rapid rate of trawl CV harvest in the Bering Sea restricts potential harvesting and delivery opportunities for trawl CVs that participate in the Aleutian Islands Pacific cod fishery and Aleutian Islands shoreplants during the lucrative A-season.

To prevent the trawl CV sector from harvesting its entire BSAI A-season Pacific cod allocation in the Bering Sea before vessels can harvest Aleutian Islands Pacific cod for processing by Aleutian Islands shoreplants, this proposed rule would establish the Bering Sea Trawl CV A-Season Sector Limitation to limit the amount of the trawl CV sector's A-season allocation that can be harvested in the Bering Sea prior to March 21. The Bering Sea Trawl CV A-Season Sector Limitation would ensure that some of the trawl CV sector's A-season allocation remains available for harvest in the Aleutian Islands by vessels that deliver their catch of Aleutian Islands Pacific cod to Aleutian Islands shoreplants for

processing. On March 21, the restriction on Bering Sea harvest by the trawl CV sector would be lifted and the remainder, if any, of the BSAI trawl CV A-season allocation could be harvested in either the Bering Sea or the Aleutian Islands (if still open to directed fishing for Pacific cod) and delivered to any eligible processor for processing.

After calculating the Aleutian Islands ICA and DFA, NMFS would calculate the Bering Sea Trawl CV A-Season Sector Limitation and the amount of the trawl CV sector A-season allocation that could be harvested in the Bering Sea prior to March 21. The Bering Sea Trawl CV A-Season Sector Limitation would be an amount equal to the lesser of either the Aleutian Islands DFA (as described above) or 5,000 mt. The Bering Sea Trawl CV A-Season Sector Limitation also would be equivalent to the Aleutian Islands CV Harvest Set-Aside, which would be the amount reserved for harvest by vessels directed fishing for Aleutian Islands Pacific cod for processing by Aleutian Islands shoreplants, described in the following section of this preamble. The amount of the trawl CV sector's A-season allocation that could be harvested in the Bering Sea prior to March 21 would be the amount of Pacific cod that remained after deducting the Bering Sea Trawl CV A-Season Sector Limitation from the BSAI trawl CV sector A-season allocation listed in the annual harvest specifications (and as determined at § 679.20(a)(7)(iv)(A)(1)(i)). NMFS would specify the Bering Sea Trawl CV A-Season Sector Limitation and the amount of the A-season trawl CV allocation that could be harvested in the Bering Sea prior to March 21 in the annual harvest specifications.

The Council considered a range of options on the amount of the Bering Sea Trawl CV A-Season Sector Limitation, and the specific date when the limitation should be lifted. The Council considered amounts for the Bering Sea Trawl CV A-Season Sector Limitation ranging from 3,000 to 7,000 mt. The Council determined and NMFS agrees that a maximum of 5,000 mt is the appropriate amount because it represents a large percentage of the total amount of Pacific cod available to the non-CDQ fishery sectors in recent years, and is in the range necessary to provide benefits to Aleutian Islands fishing communities, including shoreplant operations, when considered in combination with the GHL A-season harvest. Additionally, the Analysis shows that 5,000 mt is the approximate long-term average of the amount of Pacific cod processed at Aleutian Islands shoreplants between 2003 and

2015, when Aleutian Islands shoreplants were operational (Section 2.7.1.2 of the Analysis).

The Council also considered three dates—March 1, 15, and 21—for when the Bering Sea Trawl CV A-Season Sector Limitation should be lifted. Recent trawl CV sector harvest patterns from 2014 and 2015 show that without the limitation on harvests in the Bering Sea in place until March 21, the entire trawl CV allocation could be taken before Aleutian Islands Pacific cod have typically aggregated in early- or mid-March (see Section 2.7.1.1 of the Analysis). The March 21 date would best preserve the opportunity for vessels to continue to fish in the Aleutian Islands without having the entire A-season trawl CV sector allocation taken in the Bering Sea. The March 21 date also would not occur so late in the year that the trawl CV sector would be precluded from fully harvesting its A-season allocation. As shown in Table 30 in Section 2.7.1.1 of the Analysis, in only 3 of the 13 years between 2003 and 2015 did the trawl CV sector take the entire A-season (from January 20 until April 1) to harvest its BSAI Pacific cod A-season allocation. In the other years during this period, on average, the trawl CV sector A-season fishery closed on March 15.

Using the 2017 Aleutian Islands non-CDQ TAC from Table 3 (11,465 mt), and assuming an Aleutian Islands ICA of 2,500 mt, the Aleutian Islands DFA would be 8,965 mt. With a DFA of 8,965 mt, the Bering Sea Trawl CV A-Season Sector Limitation would be 5,000 mt, because 5,000 mt is less than the DFA of 8,965 mt. With a Bering Sea Trawl CV A-Season Sector Limitation of 5,000 mt, the maximum amount of Pacific cod that could be harvested in the Bering Sea by the trawl CV sector during the A-season prior to March 21 would be 31,732 mt (*i.e.*, trawl CV sector A-season allocation of 36,732 mt – 5,000 mt Bering Sea Trawl CV A-Season Sector Limitation = 31,732 mt maximum permissible harvest by the trawl CV sector in the Bering Sea prior to March 21). Conversely, if the 2017 Aleutian Islands non-CDQ TAC was 5,500 mt, with an Aleutian Islands ICA of 2,500 mt and a resulting Aleutian Islands DFA of 3,000 mt, then the Bering Sea Trawl CV A-Season Sector Limitation would be 3,000 mt, because the DFA was less than 5,000 mt, and the maximum amount of Pacific cod that could be harvested in the Bering Sea by the trawl CV sector during the A-season prior to March 21 would be 33,732 mt (trawl CV sector A-season allocation of 36,732 mt – Bering Sea Trawl CV A-Season

Sector Limitation of 3,000 mt = 33,732 mt).

Aleutian Islands Catcher Vessel Harvest Set-Aside

This proposed rule would require that all, or some portion, of the Aleutian Islands DFA be set aside for harvest by vessels directed fishing for Aleutian Islands Pacific cod for processing by Aleutian Islands shoreplants. This Aleutian Islands CV Harvest Set-Aside would be available for harvest by vessels using any authorized gear type and that deliver their catch to Aleutian Islands shoreplants for processing. NMFS would account for harvest and processing of Aleutian Islands Pacific cod under the Aleutian Islands CV Harvest Set-Aside separate from, and in addition to, its accounting of Aleutian Islands Pacific cod catch by the nine non-CDQ fishery sectors established under Amendment 85 to the FMP. Because of this separate accounting, the proposed Aleutian Islands CV Harvest Set-Aside would not increase or decrease the amount of BSAI Pacific cod allocated to any of the non-CDQ fishery sectors. The Aleutian Islands CV Harvest Set-Aside would apply from January 1 until March 15 of each year, unless certain notification and performance measures, described in the following section of the preamble, are not satisfied.

The amount of the Aleutian Islands CV Harvest Set-Aside would be calculated as described above for the Bering Sea Trawl CV A-Season Sector Limitation. It would be an amount equal to the lesser of either 5,000 mt or the Aleutian Islands DFA. NMFS would notify the public of the Aleutian Islands CV Harvest Set-Aside through the annual harvest specifications process.

When the Aleutian Islands CV Harvest Set-Aside is set equal to the Aleutian Islands DFA, directed fishing for Pacific cod in the Aleutian Islands could only be conducted by vessels that deliver their catch of Aleutian Islands Pacific cod to Aleutian Islands shoreplants for processing. Vessels that do not want to deliver their directed catch of Aleutian Islands Pacific cod to Aleutian Islands shoreplants for processing would be prohibited from directed fishing for Pacific cod in the Aleutian Islands during the time the Aleutian Islands CV Harvest Set-Aside is in effect. These vessels would be permitted to conduct directed fishing for groundfish other than Pacific cod in the Aleutian Islands during the time the Aleutian Islands CV Harvest Set-Aside is in effect and their harvests of Pacific cod would accrue toward the Aleutian Islands ICA. CPs would be permitted to

conduct directed fishing for Pacific cod in the Aleutian Islands during the time the Aleutian Islands CV Harvest Set-Aside side is in effect as long as they act only as CVs and deliver their directed catch of Aleutian Islands Pacific cod to Aleutian Islands shoreplants for processing. CPs also would be permitted to retain Aleutian Islands Pacific cod as incidental catch while directed fishing for groundfish other than Pacific cod and those harvests of Pacific cod would accrue toward the Aleutian Islands ICA.

When the Aleutian Islands DFA is greater than 5,000 mt, and therefore the Aleutian Islands CV Harvest Set-Aside is set equal to 5,000 mt, the difference between the DFA and the Aleutian Islands CV Harvest Set-Aside would be available for directed fishing by all non-CDQ fishery sectors with sufficient A-season allocations and could be processed by any eligible processor. This difference would be called the "Aleutian Islands Unrestricted Fishery." In years when there would be both an Aleutian Islands CV Harvest Set-Aside and an Aleutian Islands Unrestricted Fishery, vessels could conduct directed fishing for Pacific cod in the Aleutian Islands and deliver their catch to Aleutian Islands shoreplants or to any eligible processor for processing as long as the Aleutian Islands Unrestricted Fishery is open to directed fishing. CPs would be permitted to conduct directed fishing for Pacific cod in the Aleutian Islands as long as the Aleutian Islands Unrestricted Fishery is open to directed fishing. NMFS would determine whether the Aleutian Islands Unrestricted Fishery is sufficient to support a directed fishery and would notify the public through a notice in the **Federal Register**.

While the Aleutian Islands CV Harvest Set-Aside is in effect, NMFS would account for Aleutian Islands Pacific cod caught by vessels and delivered to Aleutian Islands shoreplants for processing against the appropriate fishery sector allocation, the ICA or the DFA, and the Aleutian Islands CV Harvest Set-Aside or the Aleutian Islands Unrestricted Fishery. For example, if a pot CV greater than 60 ft LOA conducted directed fishing for Aleutian Islands Pacific cod and delivered that catch to an Aleutian Islands shoreplant for processing while the Aleutian Islands CV Harvest Set-Aside was in effect, NMFS would deduct that Pacific cod from (1) the 60 ft LOA or greater pot CV sector's A-season allocation, and (2) that portion of the Aleutian Islands DFA that is the Aleutian Islands CV Harvest Set-Aside. If that same vessel conducted directed fishing for Aleutian Islands Pacific cod

and delivered that catch offshore while the Aleutian Islands CV Harvest Set-Aside was in effect, NMFS would deduct that Pacific cod from (1) the 60 ft LOA or greater pot CV sector's A-season allocation, and (2) that portion of the Aleutian Islands DFA that is the Aleutian Islands Unrestricted Fishery (if available). If no portion of the Aleutian Islands DFA were available for the Aleutian Islands Unrestricted Fishery, that catch would have to be delivered to an Aleutian Islands shoreplant. If that same vessel conducted directed fishing for sablefish in the Aleutian Islands, retained Pacific cod up to the maximum retainable amount, and delivered its sablefish and Pacific cod catch to an Aleutian Islands shoreplant for processing while the Aleutian Islands CV Harvest Set-Aside was in effect, NMFS would deduct that Pacific cod from the Aleutian Islands ICA, and it would not accrue toward the set-aside.

If certain notification and performance measures are met, the Aleutian Islands CV Harvest Set-Aside would be in effect from January 1 until March 15 of each year. If the entire set-aside was harvested and delivered prior to March 15, the Bering Sea Trawl CV A-Season Sector Limitation and Aleutian Islands CV Harvest Set-Aside would be lifted. The Aleutian Islands CV Harvest Set-Aside would end at noon on March 15 even if the entire set-aside had not been harvested and delivered to Aleutian Islands shoreplants. When the set-aside ends, any remaining Aleutian Islands DFA could be harvested by any non-CDQ fishery sector with remaining A-season allocation, and the harvest could be delivered to any eligible processor. If a vessel had been directed fishing for Aleutian Islands Pacific cod, but had not yet delivered that Pacific cod for processing when the harvest set-aside was lifted, that vessel could deliver its Pacific cod to any eligible processor. If a vessel had been directed fishing for Aleutian Islands Pacific cod, but had not yet delivered that Pacific cod for processing when the Aleutian Islands Unrestricted Fishery closed, but the Aleutian Islands CV Harvest Set-Aside was still in effect, it would be required to deliver that Pacific cod to an Aleutian Islands shoreplant for processing or be in violation of the directed fishing closure.

The Council determined and NMFS agrees that the March 15 date for lifting the Aleutian Islands CV Harvest Set-Aside is preferred for several reasons. On average, March 15 represents the average date of the peak of the Aleutian Islands Pacific cod fishery for CVs. During the period analyzed (2003

through 2015), a significant portion of Aleutian Islands Pacific cod was not delivered shoreside until mid-March (see Table 2–37 of the Analysis). Establishing a date much earlier than March 15 to relieve the Aleutian Islands CV Harvest Set-Aside would not meet the Council's goals to sustain participation in the Aleutian Islands Pacific cod fishery by Aleutian Islands communities. The protections afforded by reserving a portion of the Aleutian Islands Pacific cod non-CDQ TAC for vessels delivering to Aleutian Islands shoreplants would be lifted before the Pacific cod aggregated on the Aleutian Islands fishing grounds.

The Council and NMFS considered earlier dates by which to lift these restrictions, but given historical harvesting and delivery patterns for Aleutian Islands Pacific cod, the longer the Aleutian Islands CV Harvest Set-Aside remains in effect during the A-season each year, the greater the opportunity for complete harvest and delivery of the Aleutian Islands CV Harvest Set-Aside. The March 15 date provides greater social and economic stability for Aleutian Islands fishing communities than earlier dates. Limiting the duration of the Aleutian Islands CV Harvest Set-Aside to March 15 also would provide an opportunity for CPs to harvest Pacific cod, and for CVs to harvest and deliver Pacific cod to CPs or stationary floating processors, before the end of the A season. The proposed March 15 date balances the opportunities for all participants. Additional information is provided in Section 2.7.2.4 of the Analysis.

The Council and NMFS considered different maximum amounts for the Aleutian Islands CV Harvest Set-Aside: 3,000 mt, 5,000 mt, and 7,000 mt. For reasons described under the Bering Sea Trawl CV A-Season Sector Limitation section of this preamble, they determined 5,000 mt represents an adequate and appropriate amount for the Aleutian Islands CV Harvest Set-Aside. Under this proposed rule, any amount of the Aleutian Islands DFA above the Aleutian Islands CV Harvest Set-Aside would be available to any sector for directed fishing and could be processed by any eligible processor. By limiting the Aleutian Islands CV Harvest Set-Aside to a maximum of 5,000 mt, additional harvesting and processing opportunities would be provided to CPs, and CVs delivering to CPs or stationary floating processors, when the Aleutian Islands DFA is greater than 5,000 mt.

Continuing with the example above for calculating the Bering Sea Trawl CV A-Season Sector Limitation, and using amounts from the 2017 annual

groundfish harvest specifications, the Aleutian Islands DFA would be 8,965 mt after deducting the Aleutian Islands ICA from the Aleutian Islands non-CDQ TAC (11,465 mt – 2,500 mt = 8,965 mt). Because the DFA is larger than 5,000 mt, the Aleutian Islands CV Harvest Set-Aside would be 5,000 mt. This would also be the amount of the Bering Sea Trawl CV A-Season Sector Limitation.

The remainder of the Aleutian Islands DFA after deducting the Aleutian Islands CV Harvest Set-Aside would be available to any sector prior to March 15, and could be processed by any eligible processor. For the example described above, this Aleutian Islands Unrestricted Fishery would be 3,965 mt (8,965 mt – 5,000 mt = 3,965 mt). This means that until March 15, 5,000 mt could be harvested by vessels for processing by Aleutian Islands shoreplants, and 3,965 mt could be harvested by vessels for processing by any eligible processor.

Measures To Prevent Stranding of Aleutian Islands Non-CDQ Pacific Cod TAC

Stranding is a term sometimes used to describe TAC that remains unharvested due to regulations. The Council recommended performance measures to prevent the stranding of Aleutian Islands non-CDQ Pacific cod TAC. These measures would make the Aleutian Islands CV Harvest Set-Aside available to other sectors if the set-aside was not requested, if limited processing occurred at Aleutian Islands shoreplants, or if the Aleutian Islands CV Harvest Set-Aside was taken before March 15.

The first performance measure would require that either the City Manager of the City of Adak or the City Manager of the City of Atka notify NMFS of its intent to process Aleutian Islands Pacific cod in the upcoming fishing year. If neither city submits such notification to NMFS, the Bering Sea Trawl CV A-Season Sector Limitation and the Aleutian Islands CV Harvest Set-Aside would not be in effect for the upcoming fishing year. The Council's recommendation for this proposed measure did not specify who from Adak or Atka would be responsible for notifying NMFS of the intent to process Pacific cod. Therefore, NMFS proposes that the City Manager would be the person responsible for submitting the required notification to NMFS because both Adak and Atka have a person in the role of City Manager. NMFS solicits public comment on whether the City Manager is the appropriate person to provide such notification.

The Council recommended allowing the cities of Adak and Atka to voluntarily notify NMFS prior to November 1 if they do not intend to process Aleutian Islands Pacific cod in the upcoming year. NMFS considered this recommendation, but decided it was not necessary to state in regulations. While Adak or Atka could notify NMFS prior to November 1 that it does not intend to process, there would be no penalty if the city reconsidered and decided later, but before November 1, that it would process Aleutian Islands Pacific cod and notified NMFS accordingly.

This proposed rule would require annual notification in the form of a letter or memorandum signed by the City Manager of the city intending to process Aleutian Islands Pacific cod in the upcoming fishing year. This signed letter or memorandum would be the official notification of intent. This proposed rule would require that the official notification of intent be postmarked no later than October 31. NMFS would require that the official notification of intent be submitted to the NMFS Alaska Regional Administrator by certified mail through the United States Postal Service. Certified mail would provide the city with a proof of postmark date and date of receipt by NMFS Alaska Region. Because the official notification of intent must be postmarked by October 31, and NMFS may not receive the official notification of intent in a timely manner owing to weather, flight schedules, and other unpredictable circumstances with mail service in remote Alaskan communities, this proposed rule would also require the City Manager to submit an electronic copy of the official notification of intent and the certified mail receipt with postmark via email to NMFS. Email submission of electronic copies of the official notification of intent and the certified mail receipt with postmark by October 31 would provide NMFS with the timely information it needs to manage the upcoming fisheries. Email notification would be in addition to notification via certified U.S. Mail; email notification would not replace the requirement for notification through the U.S. Postal Service.

A city's notification of intent to process Aleutian Islands Pacific cod would be required to contain the following information: Date, name of city, a statement of intent to process Aleutian Islands Pacific cod, statement of calendar year during which the city intends to process Aleutian Islands Pacific cod, and the signature of and contact information for the City Manager of the city whose shoreplant is

intending to process Aleutian Islands Pacific cod.

On or shortly after November 1, the Regional Administrator would send a signed and dated letter either confirming receipt of the city's notification of their intent to process Aleutian Islands Pacific cod, or informing the city that notification was not received by the deadline.

Of the two notification dates considered, November 1 and December 15, the Council preferred November 1 because it would provide more time for offshore processors and non-Aleutian Islands shoreplants to make the necessary arrangements to harvest and process Aleutian Islands Pacific cod if no Aleutian Islands shoreplants would be operating in the upcoming year. A notification date of December 15 would not give vessels and offshore processors sufficient time to prepare for the harvest and processing of the full amount of the Aleutian Islands Pacific cod non-CDQ TAC if no Bering Sea Trawl CV A-Season Sector Limitation or Aleutian Islands CV Harvest Set-Aside applied.

While this proposed rule would make the set-aside available for processing by any shoreplant west of 170° W. longitude in the Aleutian Islands, the Council recognized that only the City of Adak and the City of Atka could be prepared to process Aleutian Islands Pacific cod; therefore, the Council specified that the notification requirement would only be required from either Adak or Atka and not another city that might have an Aleutian Islands shoreplant in the future. The shoreplants in Adak and Atka are likely to have the capacity to process sufficient Pacific cod to meet the other performance measures described below. Although another Aleutian Islands shoreplant may process Pacific cod from the Aleutian Islands CV Harvest Set-Aside, the set-aside would only go into effect if Adak or Atka, or both, submitted a notice of intent to process in the upcoming fishing year. The Council could consider requiring notification from additional Aleutian Island cities with shoreplants in the future, if they develop and the need arises.

The second performance measure would remove the Bering Sea Trawl CV A-Season Sector Limitation and the Aleutian Islands CV Harvest Set-Aside for the remainder of the A-season if less than 1,000 mt of Aleutian Islands CV Harvest Set-Aside is delivered to Aleutian Islands shoreplants by February 28. This proposed performance measure is intended to ensure that shoreside processing is actually occurring at a time early

enough in the A season to allow other sectors to come into the fishery if it is not. Under this proposed rule, there is incentive for an Aleutian Islands city to provide a notice of intent to process Pacific cod, even if they are uncertain at the time the notice of intent is due as to whether they will do so, because there is no penalty to the Aleutian Islands city or shoreplant for stating their intention to process, but then not doing so. This performance measure would release the Aleutian Islands CV Harvest Set-Aside and make the remaining amount of the set-aside available to other sectors if for some reason, the Aleutian Islands shoreplant were unable to process Pacific cod. The Council chose 1,000 mt as the threshold because in 9 of 11 years when the Adak shoreplant was operational (the primary Aleutian Islands shoreplant), it processed 1,000 mt of Pacific cod by February 28 (see Section 2.7.2.5 of the Analysis). The Council chose February 28 as the date by which the minimum processing threshold must be met because it would lift the restrictions a couple of weeks earlier than under the set-aside, allowing enough time for additional processing capacity to move into the Aleutian Islands Pacific cod fishery in years when harvesters and Aleutian Islands shoreplants are operating at a level that is not likely to result in the complete harvesting and processing of the Aleutian Islands CV Harvest Set-Aside.

The third performance measure would suspend the Bering Sea Trawl CV A-Season Sector Limitation for the remainder of the year if the entire

Aleutian Islands Harvest Set-Aside (5,000 mt using the 2017 example) is fully harvested and processed by Aleutian Islands shoreplants before March 15. This performance measure would recognize that if the entire Aleutian Islands CV Harvest Set-Aside is harvested and delivered, there would be no reason to continue to restrict trawl CV sector harvests in the Bering Sea because the intent for the set-aside and sector limitation would have been met.

Harvest Specifications Process To Announce BSAI A-Season Pacific Cod Limits Implemented by Amendment 113

NMFS typically publishes the proposed harvest specifications for groundfish of the BSAI in the **Federal Register** in November each year (for example, the proposed 2016–2017 harvest specifications are available at <https://alaskafisheries.noaa.gov/sites/default/files/80fr76425.pdf>). Following a public comment period, the Council modifies (if necessary) and adopts final harvest specifications at its December Council meeting and NMFS publishes the final harvest specifications early in the following year (for example, the final 2016–2017 harvest specifications are available at <https://alaskafisheries.noaa.gov/sites/default/files/81fr14773.pdf>). For fisheries that will begin before the final harvest specifications are published, such as BSAI A-season Pacific cod, NMFS publishes a temporary rule to announce and adjust (if necessary) the final amounts for those fisheries. This adjustment is typically published in the **Federal Register** in late December or early January (for example, see <https://alaskafisheries.noaa.gov/sites/default/files/81fr184.pdf>).

alaskafisheries.noaa.gov/sites/default/files/81fr184.pdf.

If this proposed rule is approved and implemented, during the annual harvest specifications process described above, NMFS would publish in the proposed harvest specifications the amounts for the Aleutian Islands ICA, DFA, CV Harvest Set-Aside, and Unrestricted Fishery, as well as the Bering Sea Trawl CV A-Season Sector Limitation, and the amount available for harvest by trawl CVs in the Bering Sea while the set-aside is in effect. These amounts would be published in a separate table to supplement the table in the harvest specifications that describes the final gear shares and allowances of the BSAI Pacific cod TAC for the upcoming year. NMFS also would publish a notice in the **Federal Register** shortly after November 1 announcing whether the Aleutian Islands CV Harvest Set-Aside and Bering Sea Trawl CV A-Season Sector Limitation were going into effect for the upcoming fishing year, and whether the harvest limits in the supplemental table would apply. If necessary, NMFS would publish in the **Federal Register** an adjustment of the BSAI A-season Pacific cod limits for the upcoming year after the Council adopts the harvest specifications in December.

For 2017, NMFS proposes to amend the 2017 harvest specifications by adding the following table to the harvest specifications. If Amendment 113 and this proposed rule are approved, and if NMFS receives timely notification of intent to process from either Adak or Atka, the harvest limits in Table 4 would be in effect in 2017.

TABLE 4—2017 BSAI A-SEASON PACIFIC COD LIMITS THAT WOULD BE EFFECTIVE UNDER AMENDMENT 113 TO THE FMP IF EITHER THE CITY OF ADAK OR THE CITY OF ATKA NOTIFIED NMFS PRIOR TO NOVEMBER 1 OF ITS INTENT TO PROCESS PACIFIC COD IN THE UPCOMING YEAR

2017 Allocations under Aleutian Islands CV Harvest Set-Aside	Amount (mt)
AI non-CDQ TAC	11,465
AI ICA	2,500
AI DFA	8,965
BSAI non-CDQ TAC	213,141
BSAI Trawl CV A-Season Allocation	36,732
BSAI Trawl CV A-Season Allocation minus Sector Limitation (available prior to March 21)	31,732
BS Trawl CV A-Season Sector Limitation	5,000
AI CV Harvest Set-Aside	5,000
AI Unrestricted Fishery	3,965

Classification

Pursuant to Section 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that Amendment 113 to the FMP and this proposed rule are consistent with the FMP, other

provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

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

Initial Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis (IRFA) was prepared for this action, as required by Section 603 of the

Regulatory Flexibility Act (RFA). The IRFA describes the economic impact the proposed rule, if adopted, would have on small entities. The IRFA describes the reasons why this action is being proposed; the objectives and legal basis for the proposed rule; the number and description of small entities directly regulated by the proposed action; any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; any overlapping, duplicative, or conflicting Federal rules; impacts of the action on small entities; and any significant alternatives to the proposed rule that would accomplish the stated objectives of the Magnuson-Stevens Act, and any other applicable statutes, and would minimize any significant adverse impacts of the proposed rule on small entities. Descriptions of the proposed action, its purpose, and the legal basis are contained earlier in this preamble and are not repeated here. A summary of the IRFA follows. A copy of the IRFA is available from NMFS (see **ADDRESSES**).

Number and Description of Small Entities Directly Regulated by the Proposed Action

This proposed rule would directly regulate three groups of entities. First, this proposed rule would directly regulate trawl CVs harvesting Pacific cod in the BSAI because this proposed rule could limit how much Pacific cod those trawl CVs could harvest in the Bering Sea, and it could prohibit trawl CVs from participating in the Aleutian Islands Pacific cod fishery if they do not deliver their Pacific cod catch to Aleutian Islands shoreplants. Second, this proposed rule would directly regulate all non-trawl CVs who are harvesting Pacific cod in the Aleutian Islands because it could prohibit those non-trawl CVs from participating in the Aleutian Islands Pacific cod fishery if they do not deliver their Pacific cod catch to Aleutian Islands shoreplants. Third, this proposed rule would directly regulate all CPs harvesting Pacific cod in the Aleutian Islands because this proposed rule could limit how much Pacific cod those CPs can harvest and process in the Aleutian Islands. This proposed rule would not directly regulate the City of Adak or the City of Atka because it does not impose a requirement on those cities, and this proposed rule would not directly regulate entities participating in the harvesting and processing of Pacific cod managed under the GHL fisheries in the Bering Sea or Aleutian Islands.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their

affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

Based on the best available and most recent complete data from 2012 through 2014, between 10 and 16 CPs, and an estimated 43 CVs (trawl and non-trawl) could be directly regulated by this action in the BSAI. Of these, no CP is estimated to be a small entity, while 6 trawl CVs and 26 non-trawl CVs are estimated to be small entities based on the best available data on the gross receipts from these entities and their known affiliates. Therefore, a total of 32 vessels considered to be small entities would be directly regulated by this action. The IRFA assumes that each vessel is a unique entity; therefore, the total number of directly regulated entities may be an overestimate because some vessels are likely affiliated through common ownership. These potential affiliations are not known with the best available data and cannot be predicted.

Impacts of the Action on Small Entities

Under this proposed rule, a portion of the Aleutian Islands non-CDQ Pacific cod TAC would be reserved for CVs harvesting Aleutian Islands Pacific cod and delivering their catch to Aleutian Islands shoreplants for processing during a portion of the year. The trawl CV sector has been the most active in the Aleutian Islands Pacific cod fishery among all of the CV sectors. Therefore, small entities in the trawl CV sector, as well as other CVs in other sectors that are small entities, that deliver Pacific cod to Aleutian Islands shoreplants would be likely to benefit from implementation of this proposed rule. Small entities in the trawl CV sector that harvest Pacific cod exclusively in the Bering Sea could experience some negative effects because the Bering Sea Trawl CV A-Season Sector Limitation established by this proposed rule would restrict the harvest of a portion of the trawl CV sector allocation in the Bering Sea for a portion of the year.

Description of Significant Alternatives Considered

The RFA requires identification of any significant alternatives to the proposed rule that accomplish the stated objectives of the proposed action, consistent with applicable statutes, and

that would minimize any significant economic impact of the proposed rule on small entities. The Council considered a status quo alternative and one action alternative with several options and suboptions. The combination of options and suboptions under the action alternative effectively provided a broad range of potential alternative approaches to status quo management. Under the status quo, there would be a continued risk that fishing communities in the Aleutian Islands would not be able to sustainably participate in the Aleutian Islands Pacific cod fishery. The action alternative does not affect any non-CDQ fishery sector's Pacific cod allocation, or the TAC of Aleutian Islands Pacific cod. The action alternative would accomplish the stated objectives of prioritizing a portion of the Aleutian Islands Pacific cod TAC for harvest by CVs that deliver their catch to Aleutian Islands shoreplants for processing, while minimizing adverse economic impacts on small entities and the potential for stranding a portion of the Aleutian Islands Pacific cod TAC.

The Council considered a range of dates, varying amounts of Aleutian Islands Pacific cod for the harvest set-aside and Bering Sea sector limitation, and a suite of mechanisms to relieve the Bering Sea Trawl CV A-Season Sector Limitation and the Aleutian Islands CV Harvest Set-Aside under the action alternative. The Council recommended the proposed combination of dates, harvest set-aside amounts, harvest limitations, and provisions to relieve the Bering Sea Trawl CV A-Season Sector Limitation and the Aleutian Islands CV Harvest Set-Aside that would give fishery participants sufficient opportunity to harvest and deliver Aleutian Islands Pacific cod to the benefit of Aleutian Islands communities and shoreplants without stranding the trawl CV sector allocation or the Aleutian Islands Pacific cod TAC. The Council recommended and NMFS is proposing selected options in the action alternative such that if specific notification or minimum harvest and processing requirements are not met by a specific date, the Bering Sea Trawl CV A-Season Sector Limitation and the Aleutian Islands CV Harvest Set-Aside would either not go into effect in the upcoming year, or they would be relieved for the remainder of the year.

The Council considered and rejected two options under the action alternative. One option would have required that if less than 50 percent of the Aleutian Islands CV Harvest Set-Aside had been landed at an Aleutian Islands shoreplant by a given date,

ranging from February 28 to March 15, the Bering Sea Trawl CV A-Season Sector Limitation and the Aleutian Islands CV Harvest Set-Aside would be lifted. Instead, the Council selected an option that would require a minimum weight (1,000 mt) rather than a minimum percentage of the Aleutian Islands CV Harvest Set-Aside that must be landed at an Aleutian Islands shoreplant for processing by a given date (February 28) for the Bering Sea Trawl CV A-Season Sector Limitation and the Aleutian Islands CV Harvest Set-Aside to remain in place.

The Council also considered and rejected an option that would have exempted certain processing vessels with a history of processing Aleutian Islands Pacific cod in at least 12 out of 15 recent years from the proposed restrictions on processing and would have allowed them to process up to 2,000 mt of Aleutian Islands Pacific cod while the set-aside was in effect. This option could have allowed up to 10 processing vessels to continue to process Pacific cod during the A-season, limiting the effectiveness of this proposed rule to minimize the risk of a diminished historical share of Aleutian Islands Pacific cod being delivered to Aleutian Islands shoreplants and the communities where those shoreplants are located.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Action

NMFS has not identified any duplication, overlap, or conflict between this proposed action and existing Federal rules.

Projected Recordkeeping and Reporting Requirements

The recordkeeping, reporting, and other compliance requirements would be increased slightly under this proposed rule. This proposed rule contains new requirements for the cities of Adak and Atka to provide notice to NMFS of its intent to process Aleutian Islands Pacific cod in the upcoming fishing year in order for the Bering Sea Trawl CV A-Season Sector Limitation and the Aleutian Islands CV Harvest Set-Aside to apply.

Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval under OMB Control Number 0648-ANIP, a temporary new information

collection that will be merged into OMB Control Number 0648-0213 upon approval by OMB. Public reporting burden for Notification of Intent to Process Aleutian Islands Pacific cod is estimated to average 30 minutes per individual response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS Alaska Region at the ADDRESSES above, and by email to *OIRA_Submission@omb.eop.gov*, or fax to (202) 395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: http://www.cio.noaa.gov/services_programs/prasubs.html.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 26, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, 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.*; 3631 *et seq.*; Pub. L. 108-447; Pub. L. 111-281.

■ 2. In § 679.2, add a definition for “Aleutian Islands shoreplant” in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Aleutian Islands shoreplant means a processing facility that is physically located on land west of 170° W. longitude within the State of Alaska.

* * * * *

■ 3. In § 679.20, add paragraph (a)(7)(viii) to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(7) * * *

(viii) *Aleutian Islands Pacific cod Catcher Vessel Harvest Set-Aside Program—(A) Calculation of the Aleutian Islands Pacific cod non-CDQ ICA and DFA.* Each year, during the annual harvest specifications process set forth at paragraph (c) of this section, NMFS will specify the Aleutian Islands Pacific cod non-CDQ incidental catch allowance and directed fishing allowance from the Aleutian Islands Pacific cod non-CDQ TAC as follows. Shortly after November 1 of each year, NMFS will announce through notice in the **Federal Register** whether the ICA and DFA will be in effect for the upcoming fishing year.

(1) *Aleutian Islands Pacific cod non-CDQ incidental catch allowance.* Each year, during the annual harvest specifications process set forth at paragraph (c) of this section, NMFS will specify an amount of Aleutian Islands Pacific cod that NMFS estimates will be taken as incidental catch in non-CDQ directed fisheries for groundfish other than Pacific cod in the Aleutian Islands. This amount will be the Aleutian Islands Pacific cod non-CDQ incidental catch allowance and will be deducted from the aggregate portion of Pacific cod TAC annually allocated to the non-CDQ sectors identified in paragraph (a)(7)(ii)(A) of this section.

(2) *Aleutian Islands Pacific cod non-CDQ directed fishing allowance.* Each year, during the annual harvest specifications process set forth at paragraph (c) of this section, NMFS will specify the Aleutian Islands Pacific cod non-CDQ directed fishing allowance. The Aleutian Islands Pacific cod non-CDQ directed fishing allowance will be the amount of the Aleutian Islands Pacific cod TAC remaining after subtraction of the Aleutian Islands Pacific cod CDQ reserve and the Aleutian Islands Pacific cod non-CDQ incidental catch allowance.

(B) *Calculation of the Aleutian Islands CV Harvest Set-Aside and Aleutian Islands Unrestricted Fishery.* Each year, during the annual harvest specifications process set forth at paragraph (c) of this section, NMFS will

specify the Aleutian Islands CV Harvest Set-Aside and the Aleutian Islands Unrestricted Fishery. The Aleutian Islands CV Harvest Set-Aside will be an amount of Pacific cod equal to the lesser of either the Aleutian Islands Pacific cod non-CDQ directed fishing allowance as determined in paragraph (a)(7)(viii)(A)(2) of this section or 5,000 mt. The Aleutian Islands Unrestricted Fishery will be the amount of Pacific cod that remains after deducting the Aleutian Islands CV Harvest Set-Aside from the Aleutian Islands Pacific cod non-CDQ directed fishing allowance as determined in paragraph (a)(7)(viii)(A)(2) of this section. Shortly after November 1 of each year, NMFS will announce through notice in the **Federal Register** whether the Aleutian Islands CV Harvest Set-Aside and the Aleutian Islands Unrestricted Fishery will be in effect for the upcoming fishing year.

(C) *Calculation of the Bering Sea Trawl CV A-Season Sector Limitation.* Each year, during the annual harvest specifications process set forth at paragraph (c) of this section, NMFS will specify the Bering Sea Trawl CV A-Season Sector Limitation and the amount of the trawl CV sector's A-season allocation that could be harvested in the Bering Sea subarea prior to March 21. The Bering Sea Trawl CV A-Season Sector Limitation will be an amount of Pacific cod equal to the lesser of either the Aleutian Islands Pacific cod non-CDQ directed fishing allowance as determined in paragraph (a)(7)(viii)(A)(2) of this section or 5,000 mt. The amount of the trawl CV sector's A-season allocation that could be harvested in the Bering Sea subarea prior to March 21 will be the amount of Pacific cod that remains after deducting the Bering Sea Trawl CV A-Season Sector Limitation from the amount of BSAI Pacific cod allocated to the trawl CV sector A-season as determined in paragraph (a)(7)(iv)(A)(1)(i) of this section. Shortly after November 1 of each year, NMFS will announce through notice in the **Federal Register** whether the Bering Sea Trawl CV A-Season Sector Limitation will be in effect for the upcoming fishing year.

(D) *Annual notification of intent to process Aleutian Islands Pacific cod—*

(1) *Submission of notification.* The provisions of paragraph (a)(7)(viii)(E) of this section will apply if the City Manager of either the City of Adak or the City of Atka submits to NMFS a timely and complete notification of its intent to process Aleutian Islands Pacific cod during the upcoming fishing year. This notification must be

submitted annually to NMFS using the methods described below.

(2) *Submittal method.* An official notification of intent to process Aleutian Islands Pacific cod during the upcoming fishing year in the form of a letter or memorandum signed by the City Manager of either the City of Adak or the City of Atka must be submitted by certified mail through the United States Postal Service to: NMFS Alaska Region, Attn: Regional Administrator, P. O. Box 21668, Juneau, AK 99802. The City Manager must also submit an electronic copy of the official notification of intent and the certified mail receipt with postmark via email to *nmfs.akr.inseason@noaa.gov*. Email submission is in addition to submission via U.S. Postal Service; email submission does not replace the requirement to submit an official notification of intent via U.S. Postal Service.

(3) *NMFS confirmation.* On or shortly after November 1, the Regional Administrator will send a signed and dated letter to the City Manager of the City of Adak or the City of Atka either confirming NMFS' receipt of its official notification of intent to process Aleutian Islands Pacific cod, or informing the city that NMFS did not receive notification by the deadline.

(4) *Deadline.* The official notification of intent to process Aleutian Islands Pacific cod for the upcoming fishing year must be postmarked no later than October 31 of each fishing year in order for the provisions of paragraph (a)(7)(viii)(E) of this section to apply during the upcoming fishing year. Notifications of intent postmarked on or after November 1 will not be accepted by the Regional Administrator. The electronic copy of the official notification of intent and certified mail receipt with postmark must be submitted to NMFS via email dated no later than October 31 of each fishing year in order for the provisions of paragraph (a)(7)(viii)(E) of this section to apply during the upcoming fishing year.

(5) *Contents of notification.* A notification of intent to process Aleutian Islands Pacific cod for the upcoming fishing year must contain the following information:

- (i) Date,
- (ii) Name of city,
- (iii) Statement of intent to process Aleutian Islands Pacific cod,
- (iv) Identification of the fishing year during which the city intends to process Aleutian Island Pacific cod, and
- (v) Signature of and contact information for the City Manager of the city intending to process Aleutian Islands Pacific cod.

(E) *Aleutian Islands community protections for Pacific cod.* If the City Manager of the City of Adak or the City Manager of the City of Atka submits a timely and complete notification in accordance with paragraph (a)(7)(viii)(D) of this section, then the following provisions will apply for the fishing year following the submission of the timely and complete notification:

(1) *Bering Sea Trawl CV A-Season Sector Limitation.* Prior to March 21, the harvest of Pacific cod by the trawl CV sector in the Bering Sea subarea is limited to an amount equal to the trawl CV sector A-season allocation as determined in paragraph (a)(7)(iv)(A)(1)(i) of this section minus the Bering Sea Trawl CV A-Season Sector Limitation as determined in paragraph (a)(7)(viii)(C) of this section. If, after the start of the fishing year, the provisions of paragraphs (a)(7)(viii)(E)(4) or (5) of this section are met, this paragraph (a)(7)(viii)(E)(1) will not apply for the remainder of the fishing year.

(2) *Aleutian Islands Catcher Vessel Harvest Set-Aside.* Prior to March 15, only catcher vessels that deliver their catch of Aleutian Islands Pacific cod to Aleutian Islands shoreplants for processing may directed fish for that portion of the Aleutian Islands Pacific cod non-CDQ directed fishing allowance that is specified as the Aleutian Islands Catcher Vessel Harvest Set-Aside in paragraph (a)(7)(viii)(B) of this section. If, after the start of the fishing year, the provisions of paragraph (a)(7)(viii)(E)(4) of this section are met, this paragraph (a)(7)(viii)(E)(2) will not apply for the remainder of the fishing year.

(3) *Aleutian Islands Unrestricted Fishery.* Prior to March 15, vessels otherwise authorized to directed fish for Pacific cod in the Aleutian Islands may directed fish for that portion of the Aleutian Islands Pacific cod non-CDQ directed fishing allowance that is specified as the Aleutian Islands Unrestricted Fishery as determined in paragraph (a)(7)(viii)(B) of this section and may deliver their catch to any eligible processor.

(4) *Minimum Aleutian Islands shoreplant landing requirement.* If less than 1,000 mt of the Aleutian Islands Catcher Vessel Harvest Set-Aside is landed at Aleutian Islands shoreplants prior to February 28, then paragraphs (a)(7)(viii)(E)(1) and (2) of this section will not apply for the remainder of the fishing year.

(5) *Harvest of Aleutian Islands Catcher Vessel Harvest Set-Aside.* If the Aleutian Islands Catcher Vessel Harvest Set-Aside is fully harvested prior to March 15, then paragraph

(a)(7)(viii)(E)(1) of this section will not apply for the remainder of the fishing year.

* * * * *

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