

(C) Weather parameters (*e.g.*, wind speed, percent cloud cover, visibility);

(D) Water conditions (*e.g.*, sea state, tide state);

(E) Species, numbers, and, if possible, sex and age class of marine mammals;

(F) Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;

(G) Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;

(H) Description of implementation of mitigation measures (*e.g.*, shutdown or delay);

(I) Locations of all marine mammal observations; and

(J) Other human activity in the area.

(2) Navy shall submit a comprehensive summary report to NMFS not later than ninety days following the conclusion of marine mammal monitoring efforts described in this subpart.

(e) Reporting of injured or dead marine mammals: In the event that personnel involved in the survey activities discover an injured or dead marine mammal, the LOA-holder must report the incident to the Office of Protected Resources (OPR), NMFS and to the West Coast Regional Stranding Network as soon as feasible. The report must include the following information:

(1) Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

(2) Species identification (if known) or description of the animal(s) involved;

(3) Condition of the animal(s) (including carcass condition if the animal is dead);

(4) Observed behaviors of the animal(s), if alive;

(5) If available, photographs or video footage of the animal(s); and

(6) General circumstances under which the animal was discovered.

§ 218.36 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the Navy must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, the Navy may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, the Navy must apply for and

obtain a modification of the LOA as described in § 218.37.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within thirty days of a determination.

§ 218.37 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under § 216.106 of this chapter and § 218.36 for the activity identified in § 218.30(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section), and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under § 216.106 of this chapter and § 218.36 for the activity identified in § 218.30(a) may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with the Navy regarding the

practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from the Navy's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) Emergencies—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to § 216.106 of this chapter and § 218.36, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

§ 218.38–§ 218.39 [Reserved]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No.: 191202-0096]

RIN 0648-BJ42

Control Date for Catcher/Processors Using Pot Gear in the Bering Sea and Aleutian Islands Pacific Cod Fishery

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

ACTION: Advance notice of proposed rulemaking (ANPR); control date.

SUMMARY: At the request of the North Pacific Fishery Management Council (Council), this notice announces a control date of December 10, 2019, that may be used as a reference date for a future management action to limit

future access to the Bering Sea and Aleutian Islands (BSAI) Pacific cod pot catcher/processor sector. This notice is intended to promote awareness of possible rulemaking and provide notice to the public that any participation in the BSAI Pacific cod pot catcher/processor sector after the control date may not ensure continued access to this fishery under a future management action. This notice is also intended to discourage speculative entry into this fishery while the Council considers whether and how access to the fishery may be further limited under a future management action.

DATES: December 10, 2019, shall be known as the control date for the BSAI Pacific cod pot catcher/processor sector fishery and may be used as a reference date for participation in a future management action that is consistent with the Council's objectives and applicable Federal laws.

FOR FURTHER INFORMATION CONTACT: Kurt Iverson: 907-586-7228 or Kurt.Iverson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the U.S. exclusive economic zone (EEZ) of the BSAI under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The Council prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

This advance notice of proposed rulemaking would apply to owners and operators of catcher/processor vessels that participate in Federal groundfish fisheries with pot gear in the BSAI. The BSAI is defined at § 679.2 and shown in Figure 1 to 50 CFR part 679.

The Council and NMFS annually establish overfishing limits and annual total allowable catch limits for groundfish species to sustainably manage the groundfish fisheries in the BSAI. To achieve these objectives, NMFS requires vessel operators participating in BSAI Pacific cod fisheries to comply with various regulatory restrictions, such as fishery closures and limits on participation and

effort, to maintain catch within specified total allowable catch limits.

The Council and NMFS have long sought to control fishing effort in the North Pacific Ocean to ensure that fisheries are conservatively managed and do not exceed established biological thresholds. One of the measures used by the Council and NMFS is the license limitation program (LLP), which limits access to the federally managed groundfish, crab, and scallop fisheries in the BSAI and the Gulf of Alaska. For groundfish, the LLP requires that persons hold and assign a license to each vessel that is used to fish in federally managed fisheries, with some limited exemptions. The preamble to the final rule implementing the groundfish LLP provides a more detailed explanation of the rationale for specific provisions in the LLP (October 1, 1998; 63 FR 52642).

A vessel participating in groundfish fisheries in Federal waters in the BSAI or GOA is required to have an LLP license with the applicable area, gear, and operation type endorsements, and a sufficient maximum length overall (MLOA) In 2019, there were a total of eight LLP licenses with a BS Pacific cod pot catcher/processor (C/P) endorsement. Of those eight LLP licenses, five LLP licenses also had an AI Pacific cod pot C/P endorsement, three LLP licenses also had a BS Pacific cod HAL C/P endorsement, and three LLP licenses also had an AI Pacific cod HAL C/P endorsement.

In October 2019, the Council reviewed a discussion paper and received public testimony from participants in the BSAI Pacific cod pot C/P sector. These participants indicated that a new vessel entered the fishery in recent years and this new entry may negatively impact the ability of historical fishery participants to maintain groundfish harvests and processing in the BSAI.

After considering this public testimony, the Council stated its intent to evaluate methods for further limiting access to the BSAI Pacific cod pot catcher/processor sector in a future management action. To dampen the effect of speculative entry into this sector during this deliberative period, the Council announced a control date. This date corresponds to the date of

publication of this advance notice of proposed rulemaking after the end of the 2019 fishing season and prior to the start of the 2020 fishing season.

The control date may be used as a reference date for a future management action to further limit access to the BSAI Pacific cod pot catcher/processor sector. The Council clarified that the control date would not obligate the Council to use this control date in any future management action. Further, the control date would not obligate the Council to take any action or prevent the Council from selecting another control date. Accordingly, this notice is intended to promote awareness that the Council may develop a future management action to achieve its objectives for the BSAI Pacific cod pot catcher/processor sector fishery; to provide notice to the public that any current or future access to the Pacific cod pot catcher/processor fishery may be affected or restricted; and to discourage speculative participation and behavior in the fisheries while the Council considers whether to initiate a management action to further limit access to this fishery. Any measures the Council considers may require changes to the FMP. Such measures may be adopted in a future amendment to the FMP, which would include opportunity for further public participation and comment.

NMFS encourages public participation in the Council's consideration of a management action to further limit access to BSAI Pacific cod fishery. Please consult the Council's website at <http://www.npfmc.org/> for information on public participation in the Council's decision-making process. The Council is scheduled to receive an initial review draft Analysis at its meeting scheduled for March 30, 2020 through April 7, 2020.

This notification and control date do not impose any legal obligations, requirements, or expectations.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 2, 2019.

Samuel D. Rauch III,
*Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

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