

Final Analysis for Amendments Correcting Vessel Length Exemptions to the License Limitation Program

Amendment 108 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, Amendment 100 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, and Amendment 46 Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs

North Pacific Fishery Management Council¹

April 2015

All changes to a Fishery Management Plan (FMP), even minor typographical changes, require an FMP amendment that is approved by the North Pacific Fishery Management Council (NPFMC or Council). The purpose of the action described in this analysis is to correct FMP text that is inconsistent with the Council's intent of the license limitation program (LLP) and Federal regulations implementing the LLP. The proposed amendments do not require changes to Federal regulations. The amendments under consideration would align the FMP text that establishes the vessel size standards for exempting small vessels from the LLP in the BSAI groundfish and king and Tanner crab fisheries, as well as GOA groundfish fisheries, with the original intent of the LLP, current operations in the fisheries, and Federal regulations.²

Specifically these amendments would include correcting FMP text that describes the vessels exempted from the LLP: 1) in the BSAI groundfish fisheries from vessels less than 32 ft. length overall (LOA) to vessels less than or equal to 32 ft. LOA, 2) in the GOA groundfish fisheries from vessels less than 26 ft. LOA to vessels less than or equal to 26 ft. LOA, and 3) in the BSAI king and Tanner crab fisheries from vessels less than 32 ft. LOA to vessels less than or equal to 32 ft. LOA.³ These corrections would reflect

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² The proposed FMP amendment text is included as Appendix A.1, A.2, and A.3.

³ The Fishery Management Plan for the Scallop Fishery off Alaska also restricts participation with an LLP; however, this program does not provide for an exemption for small vessels (NPFMC, 2014a). The Fishery Management Plan for the Salmon Fisheries in the EEZ off Alaska and the Fishery Management Plan for Fish Resources of the Arctic

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the Council's initial intent for the LLP, highlighted in the following analysis on the development of the provisions.⁴

50 CFR 679.4(k)(1) describes the general requirements for the licenses of the Federal LLP for groundfish or crab species in the U.S. exclusive economic zone. 50 CFR 679.4(k)(2) states:

- (2) Exempt vessels.
Notwithstanding the requirements of paragraph (k)(1) of this section,
- (i) A catcher vessel or catcher/processor vessel that does not exceed 26 ft (7.9 m) LOA may conduct directed fishing for license limitation groundfish in the GOA without a groundfish license;
 - (ii) A catcher vessel or catcher/processor vessel that does not exceed 32 ft (9.8 m) LOA may conduct directed fishing for license limitation groundfish in the BSAI without a groundfish license and may conduct directed fishing for crab species in the Bering Sea and Aleutian Islands Area without a crab species license;...

The BSAI Groundfish FMP (NPFMC 2014b), the GOA Groundfish FMP (NPFMC 2014c), and the BSAI King and Tanner Crab FMP (NPFMC 2011) are not consistent with the "does not exceed" text in the regulations.

Instead the BSAI Groundfish FMP currently states (Section 3.3.1):

A Federal groundfish license is required for catcher vessels (including catcher/processors) participating in all BSAI groundfish fisheries, other than fixed gear sablefish. However, the following vessel categories are exempt from the license program requirements:

- a. vessels fishing in State of Alaska waters (0-3 miles offshore);
- b. vessels less than 32 ft LOA; ...

The GOA Groundfish FMP currently states (Section 3.3.1):

Beginning on January 1, 2002, a Federal groundfish license is required for harvesting vessels (including harvester/processors) participating in all directed GOA groundfish fisheries, other than fixed gear sablefish throughout the GOA and demersal shelf rockfish in the Southeast Outside area (east of 140E W. longitude). Vessels fishing in State of Alaska waters (0-3 miles offshore) will be exempt, as will vessels less than 26 ft LOA and vessels using jig gear, subject to gear restrictions.

The BSAI King and Tanner Crab FMP currently states (Section 8.1.4.2):

A vessel license limitation program (LLP) was approved as Amendment 5 on September 12, 1997 and requires a Federal Crab License on harvesting vessels (including harvester/processors) participating in the BSAI King and Tanner Crab fisheries. Vessels fishing in State waters will be exempt, as will vessels

Management Area do not contain LLPs. This amendment does not apply to these three FMPs.

⁴ The proposed action is a non-substantive change that would amend the FMPs to be consistent with current regulations and operations in the fisheries. Therefore, the proposed change has no effect individually or cumulatively on the human environment (as defined in NAO 216-6). As such, it is categorically excluded from the need to prepare an Environmental Assessment (EA).

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< 32'. The LLP will replace the vessel moratorium and will last until the Council replaces or rescinds the action.

A final rule published on August 10, 1995 (60 FR 40763), implemented a temporary moratorium on the entry of new vessels into the groundfish, crab, and halibut fisheries established by Amendment 23 to the BSAI Groundfish FMP, Amendment 28 to the GOA Groundfish FMP, Amendment 4 to the BSAI King and Tanner Crab FMP, and a regulatory amendment affecting the Pacific halibut fishery in the waters in and off of Alaska.

The analysis for the moratorium (NPMFC, 1994) stated that there would be a small vessel exemption from the proposed action. The Council's preferred alternative provided the rationale for this small vessel exemption (Section 8.2.8).

8.2.8 Small Vessel Exemptions

The difference in the vessel length criteria adopted for the GOA and the BSAI reflects differences in fishing opportunities, historical practices, and fishing conditions in the two areas. For the BSAI, the small vessel cutoff is 32 ft which is the historical length restriction imposed on the Bristol Bay drift gillnet salmon fishery. Though these vessels often participate in some near-shore Council-managed BSAI fisheries, they do not account for a significant volume of total catch or catch capacity. For the GOA, the small vessel cutoff is 26 ft, representative of the typical skiff fleet in the GOA. In both the BSAI and the GOA, the Council reasoned that the exempted class of vessel does not contribute significantly to the industry overcapitalization problem.⁵

The moratorium analysis resulted in the addition of the following relevant language to the FMPs. The BSAI Groundfish FMP was revised to state:

14.4.7.2.1 Elements of the Moratorium

10. Small Vessel Exemptions. Vessels 32 ft or less LOA would be exempted from the moratorium in the Bering Sea Aleutian Islands.

The GOA Groundfish FMP was revised to state:

4.4.1.2.1 Elements of the Moratorium

10. Small Vessel Exemptions. Vessels 26 ft or less LOA would be exempted from the moratorium in the Gulf of Alaska.

The BSAI King and Tanner Crab FMP was revised to state:

8.1.4.1.1 Elements of the Moratorium

24. Small Vessel Exemptions. Vessels 32 ft or less LOA would be exempted from the moratorium in the Bering Sea Aleutian Islands.

In a final rule published on October 1, 1998 (63 FR 52642), the LLP replaced the moratorium on new vessel entrants into the fishery and instead granted vessels with historical participation in certain

⁵ While the specification "vessel cutoff is 32 ft" is still somewhat vague, State of Alaska regulations stipulate, "No vessel registered for salmon net fishing may be more than 32 feet in overall length" (5 AAC 06.341 Vessel specifications and operations).

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fisheries a Federal license with endorsements for participating in different regions, fishing with different gear types, and fishing for some distinct species. In the development of that program the Council intended to carry over the same small vessel exemptions as existed under the moratorium. However the numerous iterations of the LLP analysis all provided a conflicting exemption to what was established by the moratorium action. For instance, at the June 1995 Council meeting in Dutch Harbor, the EA/RIR draft for Final Review (NPFMC 1995) stated:

The following exemptions are included in the License Limitation program: (1) vessels that were exempted from the proposed moratorium would also be exempt from the license limitation program (<26' in the GOA and <32' in the BSAI) and (2) vessels in the BSAI using jig gear that are less than 60' using a maximum of 5 machines, one line per machine, and a maximum of 15 hooks per line. Unlike the moratorium, any 'exempt' vessel which qualifies for a license would receive a license.

It was evident from the discussion that followed that the Council was under the impression that the moratorium contained these same thresholds for exemption. The Council's motion (NPFMC 1995) stated:

... This action contains the following exceptions to the license limitation program: (1) the vessels that were exempted from the proposed moratorium would also be exempt from the license limitation program (26' in the Gulf of Alaska and 32' in the Bering Sea/ Aleutian Islands) and, (2) vessels in the Bering Sea/Aleutian Islands using jig gear that are less than 60' in length using a maximum 5 machine, 1 line per machine, and a maximum of 15 hooks per line.

Based on this analysis for the LLP, subsequent changes were made to Federal regulations and to the FMPS by Amendment 39 to the BSAI Groundfish FMP, Amendment 41 to the GOA Groundfish FMP, and Amendment 5 to the King and Tanner Crab FMP. These changes resulted in the current exemption provisions for the LLP as stated above, and the inconsistencies between the FMPs and Federal regulations.

Given the moratorium provisions of *less than or equal to 26 ft LOA* and *less than or equal to 32 ft LOA*, and the Council's stated intention to make the LLP small vessel exemptions consistent with this action, the BSAI Groundfish FMP, the GOA Groundfish FMP, and the BSAI King and Tanner Crab FMP have errors that require correction. This correction will make the FMPs consistent with Federal regulations, the original Council intent, and historical operation of the LLP since implementation.

References

- North Pacific Fisheries Management Council (NPFMC). (1994) Draft for Secretarial Review EA/RIR/IRFA for the Proposed Moratorium on the Entry of New Vessels into the Groundfish, Crab, and Halibut Fisheries. (April 28, 1994.) Anchorage, AK.
- North Pacific Fisheries Management Council (NPFMC). (1995) Draft for Final Review EA/RIR for the License Limitation Alternatives for Groundfish and Crab Fisheries of the North Pacific. (June 1995.) Anchorage, AK.
- NPFMC. (2011) Fisheries Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs. (October 2011.) Anchorage, AK. Accessed at: <http://www.npfmc.org/wp-content/PDFdocuments/fmp/CrabFMPOct11.pdf>.
- NPFMC. (2014c) Fisheries Management Plan for Groundfish of the Gulf of Alaska. (January 2014.) Anchorage, AK. Accessed at: <http://www.npfmc.org/wp-content/PDFdocuments/fmp/GOA/GOAfmppdf.pdf>.

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NPFMC. (2014a) Fisheries Management Plan for the Scallop Fishery off Alaska. (February 2014.) Anchorage, AK. Available at: <http://www.npfmc.org/wp-content/PDFdocuments/fmp/Scallop/ScallopFMP2014.pdf>.

NPFMC. (2014b) Fisheries Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. (April 2014.) Anchorage, AK. Accessed at: <http://www.npfmc.org/wp-content/PDFdocuments/fmp/BSAI/BSAIfmp.pdf>.

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Appendix A.1 Amendment Text for BSAI Groundfish FMP

Proposed Amendment 108

to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands (BSAI) Management Area

Additions are in bold.

1. Update Table of Contents as needed.
2. In the Executive Summary, Table ES-2, the description corresponding with the row labeled "Permit" is revised to read as follows:

All vessels participating in the BSAI groundfish fisheries, other than fixed gear sablefish, require a Federal groundfish license, except for: vessels fishing in State of Alaska waters; vessels less than or equal to 32' LOA; and jig gear vessels less than 60' LOA that meet specific effort restrictions. Licenses are endorsed with area, gear, and vessel type and length designations.

Fixed gear vessels engaged in directed fishing for Pacific cod must qualify for a Pacific cod endorsement.

Fishing permits may be authorized, for limited experimental purposes, for the target or incidental harvest of groundfish that would otherwise be prohibited.

3. Section 3.3.1 titled "License Limitation Program" includes a list of three vessel categories that are exempt from Federal groundfish license requirements. This proposal would correct exemption 'b':

A Federal groundfish license is required for catcher vessels (including catcher/processors) participating in all BSAI groundfish fisheries, other than fixed gear sablefish. However, the following vessel categories are exempt from the license program requirements:

- a. vessels fishing in state of Alaska waters (0-3 miles offshore);
- b. vessels less than or equal to 32 ft LOA;
- c. jig gear vessels less than 60 ft LOA using a maximum of 5 jig machines, one line per machine, and a maximum of 15 hooks per line; or

* * * * *

4. Appendix A is amended to add the following text in Section A.1, Amendments to the FMP, in chronological amendment order, as follows (insert amendment implementation date):

* * * * *

Amendment 108, implemented on _____:

This amendment corrects an error in the FMP text that establishes vessel length limits for small vessels exempted from the license limitation program (LLP) in the Bering Sea and Aleutian Islands Management Area (BSAI) groundfish fishery. This amendment aligns FMP text with the original intent of the LLP, operations in the fisheries, and Federal regulations.

Appendix A.2 Text for GOA Groundfish FMP

Proposed Amendment 100

to the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska (GOA)

Additions are in bold.

1. Update Table of Contents as needed.
2. In the Executive Summary, Table ES-2, the description corresponding with the row labeled “Permit” is revised to read as follows:

All vessels participating in the GOA groundfish fisheries, other than fixed gear sablefish and demersal shelf rockfish in Southeast Outside district, require a Federal groundfish license, except for: vessels fishing in State of Alaska waters and vessels less than **or equal to 26'** LOA. Licenses are endorsed with area, gear, and vessel type and length designations.

Fishing permits may be authorized, for limited experimental purposes, for the target or incidental harvest of groundfish that would otherwise be prohibited.

3. In Section 3.3.1 titled “License Limitation Program,” the introductory paragraph is revised to read as follows:

Beginning on January 1, 2002, a Federal groundfish license is required for harvesting vessels (including harvester/processors) participating in all directed GOA groundfish fisheries, other than fixed gear sablefish throughout the GOA and demersal shelf rockfish in the Southeast Outside area (east of 140E W. longitude). Vessels fishing in State of Alaska waters (0-3 miles offshore) will be exempt, as will vessels less than **or equal to 26 ft** LOA and vessels using jig gear, subject to gear restrictions. Vessels exempted from the GOA groundfish license program, will be limited to the use of legal fixed gear in the Southeast Outside area.

4. Appendix A is amended to add the following text in Section A.1, Amendments to the FMP, in chronological amendment order as follows (insert amendment implementation date):

* * * * *

Amendment 100, implemented on _____:

This amendment corrects an error in the FMP text that establishes vessel length limits for small vessels exempted from the license limitation program (LLP) in the Gulf of Alaska (GOA) groundfish fisheries. This amendment aligns FMP text with the original intent of the LLP, operations in the fisheries, and Federal regulations.

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Appendix A.3 Amendment Text for BSAI Crab FMP

Proposed Amendment 46

to the Fishery Management Plan (FMP) for Bering Sea/ Aleutian Islands (BSAI) King and Tanner Crabs

Deletions are stricken and additions are in bold.

1. Update Table of Contents as needed.
2. In Section 8.1.4.2 titled "Vessel License Limitation," the introductory paragraph is revised to read as follows:

A vessel license limitation program (LLP) was approved as Amendment 5 on September 12, 1997 and requires a Federal Crab License on harvesting vessels (including harvester/processors) participating in the BSAI King and Tanner Crab fisheries. Vessels fishing in State waters will be exempt, as will vessels **less than or equal to 32'**. The LLP will replace the vessel moratorium and will last until the Council replaces or rescinds the action. The crab CDQ portion of Amendment 5 became effective March 23, 1998. The crab CDQ program establishes the crab CDQ reserve and authorizes the State of Alaska to allocate the crab CDQ reserve among CDQ groups and to manage crab harvesting activity of the BS/AI CDQ groups.

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Rev 1/9/15 to add items to BSAI FMP amendment text