

Amendment Correcting Vessel Length Exemptions to the License Limitation Program

Proposed Amendments to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands, Groundfish of the Gulf of Alaska, and Bering Sea/Aleutian Islands King and Tanner Crabs

North Pacific Fisheries Management Council¹
December 2014

All changes to a Fishery Management Plan (FMP), even minor typographical changes, require an FMP amendment that is approved by the North Pacific Fisheries Management Council (Council). The purpose of action 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 programs, current operations in the fishery, and Federal regulations.²

Specifically these amendments would include changing the vessels exempted from the License Limitation Program (LLP): 1) in the BSAI groundfish fisheries from less than 32 ft. length overall (LOA) to less than or equal to 32 ft. LOA, 2) in the GOA groundfish fisheries from less than 26 ft. LOA to less than or equal to 26 ft. LOA, and 3) in the BSAI king and tanner crab fisheries from less than 32 ft. LOA to less than or equal to 32 ft. LOA.³ These corrections are believed to reflect 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. EEZ. 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

¹ Contacts: Sarah Marrinan, NPFMC; SeanBob Kelly, NMFS; Tom Meyer, NOAA GC, Alaska Section.

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

³ The FMP for the Scallop Fishery off Alaska also restricts participation with an LLP; however, this program does not provide for an exemption for small vessel (NPFMC, 2014). The Salmon of the EEZ and Arctic FMPs 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 FMP to be consistent with current regulations and operation in the fishery. 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).

directed fishing for crab species in the Bering Sea and Aleutian Islands Area without a crab species license;...

The BSAI Groundfish FMP, the GOA Groundfish FMP, and the BSAI King and Tanner Crabs FMP 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. vessel fishing in the state of Alaska (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 Crabs 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 < 32'. The LLP will replace the vessel moratorium and will last until the Council replaces or rescinds the action.

On August 10, 1995, 60 FR 40763 established a moratorium for a temporary period on the entry of new vessels into the groundfish, crab, and halibut fisheries contained in proposed Amendment 23 to the FMP for the groundfish fishery of the BSAI, proposed Amendment 28 to the FMP for groundfish fishery of GOA, proposed Amendment 4 to the FMP for the commercial king and Tanner crab fisheries in the BSAI, and a proposed 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 (PA) provided 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 stated:

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 stated:

4.4.1.2.1 Elements of the Moratorium

...

11. 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 stated:

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 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 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 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 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.

⁵ While the specification "vessel cutoff is 32 ft" is still somewhat vague, state 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).

Based on this analysis for the LLP, subsequent changes were made to regulations as well as 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, in which the FMP and regulations are inconsistent with each other.

Given the moratorium provisions of *less than or equal* to 26 ft LOA and 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, the BSAI King and Tanner Crab FMP have errors that require correction. This correction will make the FMPs consistent with the regulations, original Council intent, and consistent with 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>.
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- NPFMC. (2014) 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. (2014) 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>.

Appendix A.1 Amendment Text for BSAI Groundfish FMP

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

Additions are in bold.

1. Updated Table of Contents as needed
2. In Section 3.3.1 titled “License Limitation Program” includes a list of three vessel categories that are exempt from Federal groundfish license requirements. The proposed amendment would add a fourth to this list as follows:

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:

- c. vessel fishing in the state of Alaska (0-3 miles offshore);
 - d. vessels less than **or equal to** 32 ft LOA;
 - e. 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
 - f. catcher vessels greater than 32’ LOA but less than or equal to 46’ LOA that are directed fishing for Pacific cod with hook-and-line gear on behalf of the CDQ group.
3. Updated Appendix A Section A.1 with description of Amendment

Appendix A.2 Amendment Text for GOA Groundfish FMP

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

Additions are in bold.

1. Updated 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:

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. Updated Appendix A Section A.1 “Amendments to the FMP” with description of Amendment

Appendix A.3 Amendment Text for BSAI Crab FMP

Proposed Amendment 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. Updated Table of Contents as needed
2. In Section 8.1.4.2 titled “Vessel License Limitation”, the introductory paragraph is revised to read:

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.