

Comment 1: Most commenters expressed general support for Amendment 97 and the proposed rule.

Response: NMFS acknowledges this comment.

Comment 2: One commenter expressed general dissatisfaction with fishery management policy and suggested that Amendment 80 vessels should not be permitted to be replaced. Instead, the commenter suggested that NMFS should reduce the number of vessels in the Amendment 80 fleet and require existing vessels meet modern safety standards.

Response: No changes have been made to the proposed rule in response to this comment. The Council considered and rejected an alternative that would prevent Amendment 80 vessels from being replaced. As described in Section 2.5.1 of the analysis for this action, the Council considered Alternative 1a, the No Action alternative. This alternative directly contravenes the CRP and the court's order in Arctic Sole Seafoods v. Gutierrez, is inconsistent with the Council's and NMFS' past practice of allowing replacement vessels in catch share programs, including NMFS' authorization of a replacement vessel for the originally qualifying Amendment 80 vessel F/V Arctic Rose, and creates an untenable disagreement between Amendment 97 as approved by NMFS and implementing regulations. The court in Arctic Sole Seafoods v. Gutierrez held that the owner of an originally qualifying Amendment 80 vessel may "replace a lost qualifying vessel with a single substitute vessel." Without a way to replace vessels, there would be a slow reduction of the Amendment 80 fleet through attrition. In addition, Alternative 1a was rejected because it would fail to meet the specific recommendation of the National Transportation Safety Board (NTSB) made following the sinking of the FV Alaska Ranger. After that accident, the NTSB recommended that NMFS establish clear regulatory provisions that allow vessel replacement for reasons other than loss.

Had the Council recommended Alternative 1a, Amendment 80 vessel owners would need to maintain and update originally qualifying vessels. As noted in section 2.4.9.1 of the analysis for this action and summarized in response to Comment 11, the age of the current fleet would prevent even rebuilt vessels (i.e. vessels undergoing a major conversion) from being classed and load lined. The Council recommended the preferred alternative, in part, to encourage replacement of existing vessels with newly constructed vessels that must meet all applicable safety laws and could increase the wholesale value of fishery products through the use of value-added processing forms. Newer vessels are likely to incorporate safer designs and more advanced safety measures. In addition, new vessels can be designed to meet contemporary international class and load line requirements that would allow vessel operators to retain more products than they currently can under the U.S. Coast Guard's ACSA program, thereby improving the retention and utilization of groundfish.

Comment 3: Most commenters urged NMFS to implement Amendment 97 in an expedited manner and suggested that the delayed Secretarial review of Amendment 97 and its implementing regulations has surpassed a reasonable standard.

Response: NMFS is aware that there is significant interest within the Amendment 80 sector to begin the process of replacing aging vessels and that publication of a final rule implementing Amendment 97 is needed to provide regulatory certainty to Amendment 80 vessel owners. NMFS has many competing projects and worked expeditiously to begin Secretarial review of Amendment 97. NMFS directed limited resources away from other high priority projects to expedite the implementation of this action. NMFS periodically informed the public and the Council of the status of the development of the proposed and final rules and other competing projects. Although the Council did not specifically request prioritization of this

action relative to other NMFS projects, NMFS did respond to requests for additional information on a timely basis and considered comments from the public and individual Council members when establishing priorities. NMFS disagrees with any characterization by the commenter that NMFS purposefully delayed Secretarial review of Amendment 97 and its implementing regulations.

Comment 8: The proposed regulations do not go far enough to restrict the use of replaced Amendment 80 vessels in other fisheries. NMFS should implement stronger regulations similar to those prohibiting replaced AFA vessels from participating in any fishery in the EEZ. Specifically, the Coast Guard Authorization Act of 2010 limits the use of replaced AFA vessels by stating that a replaced AFA vessel will no longer be eligible for a fishery endorsement, unless the vessel in turn replaces another AFA vessel. Allowing less-safe replaced Amendment 80 vessels to participate in other fisheries contradicts National Standard 10, to promote safety of human life at sea.

Response: As noted in section 2.5.9 of the analysis for this action, the Council and NMFS are limited in their ability to address the status of replaced vessels. NMFS does not have general authority to remove a fishery endorsement issued by the U.S. Coast Guard under 46 U.S.C. 12108. NMFS has been able to permanently remove a vessel's ability to receive a fishery endorsement only when granted specific statutory authority by Congress. For example, NMFS removed a vessel's fishing endorsement under the Crab Buyback Program under the authority of the Consolidated Appropriations of 2001 (Pub L. 106-555, sec. 144) and has been granted the authority to do so for replaced AFA vessels (see 46 U.S.C. 12113). Without specific authority from Congress to remove a fishery endorsement from a replaced Amendment 80 vessel, NMFS

and the Council had to consider other options to limit the potential use of replaced vessels outside of its jurisdiction.

At final action, the Council recommended that NMFS implement a sideboard limit of zero metric tons of groundfish as defined in the BSAI and GOA FMPs for replaced Amendment 80 vessels. A groundfish sideboard limit of zero for replaced Amendment 80 vessels will prohibit replaced vessels from conducting directed fishing for federally managed groundfish in the BSAI and GOA and should prevent the harvesting capacity of a replaced vessel from displacing existing fishery participants or accelerating the race for fish in non-catch share fisheries managed by the Council. This provision is consistent with similar measures taken to limit access to vessels participating in other limited access privilege program fisheries in the BSAI.

NMFS disagrees that failing to prevent replaced vessels from the Amendment 80 fleet from participating in any EEZ fishery is inconsistent with National Standard 10 of the Magnuson-Stevens Act, which requires that the Secretary shall, to the extent practicable, promote safety of human life at sea. The Secretary has determined that Amendment 97 and this final rule are consistent with all of the national standards and U.S. Coast Guard safety regulations. As described in the proposed rule, U.S. Coast Guard regulations require various safety standards based on the type of processing conducted by the vessel, the area in which the vessel operates, and the number of crew it carries. For example, a replaced Amendment 80 vessel could potentially operate safely in a lower-risk fishery, outside of the North Pacific. The U.S. Coast Guard has found that fatality rates and causal factors are highly differentiated among vessel type, fishery gear, species being fished, and geographic region. NMFS notes that replaced

Amendment 80 vessels will be required to meet the applicable fishing vessel safety regulations to operate in other Federal fisheries outside of the North Pacific region.

Comment 9: The proposed rule at page 20344 is misleading and needs to be clarified. NMFS needs to clarify that the provisions of the Coast Guard Authorization Act of 2010 concerning “replaced” AFA vessels are not implicated when a permitted AFA vessel is “replacing” a vessel in another fishery.

Response: NMFS disagrees that the proposed rule was misleading. However, NMFS clarifies that the Coast Guard Authorization Act of 2010 (Pub. L. 111-281, Title VI, Sec. 602) prohibits replaced AFA vessels from participation in any fishery other than as a replacement vessel in the AFA fleet and agrees with the commenter that these provisions do not apply to AFA vessels that are legally participating in AFA fisheries and are also used to replace a vessel in another fishery.

#### MLOA of 295 Feet (89.9 m) for All Replacement Vessels

Comment 10: The proposed rule incorrectly states that the longest MLOA in the Amendment 80 fleet is 295 feet (89.9 m). One vessel, the F/V Seafreeze Alaska, currently is assigned an LLP license with an MLOA of 296 feet (90.2 m). As proposed, the regulations would reduce the MLOA of the LLP license associated with this vessel to 295 feet (89.9 m). The administrative record does not support reducing the MLOA of the LLP license associated with the F/V Seafreeze Alaska and NMFS should not reduce the MLOA for the LLP license associated with this vessel. One commenter suggested that NMFS establish a 295 feet (89.9 m) MLOA for all Amendment 80 LLP licenses that have an existing MLOA of less than 295 feet (89.9 m) when the license is assigned to a replacement vessel, while another commenter

suggested that NMFS should allow Amendment 80 replacement vessels to have an MLOA of 296 feet (90.2 m) rather than the proposed MLOA of 295 feet (89.9 m).

Response: NMFS agrees that the proposed rule preamble on page 20340 incorrectly states that the longest MLOA on an Amendment 80 LLP license is 295 feet (89.9 m). While this sentence is incorrect, the information provided in Tables 1 and 28 and in section 2.4.5 of the analysis for this action accurately state that the MLOA of the LLP license associated with the F/V Seafreeze Alaska is 296 feet (90.2 m).

The F/V Seafreeze Alaska is named on an LLP with an MLOA of 296 feet (90.2 m); however, the F/V Seafreeze Alaska is 295 feet (89.9 m) LOA as noted on the Federal Fisheries Permit assigned to that vessel. Tables 1 and 28 of the analysis note both the 296 feet (90.2 m) MLOA of the LLP license currently associated with the F/V Seafreeze Alaska and the 295-foot LOA (89.9 m) for the F/V Seafreeze Alaska. Upon initial issuance of an LLP license, each license holder was assigned an MLOA based on the length of the qualifying vessel on a specific date, as described in the final rule for the LLP program (63 FR 52642; October 1, 1998). During the development of Amendment 97, NMFS recommended that the Council take similar action when considering vessel length restrictions as part of a vessel replacement action. Specifically, NMFS proposed that the Council establish the LOA of an originally qualifying Amendment 80 vessel as the benchmark for determining the maximum LOA of any replacement vessel under any length limit alternatives considered by the Council. NMFS used the LOA in its Federal fishing permit database as the basis for determining the LOA for all qualifying vessels, and those data are presumed to be correct. Therefore, under the final rule, the MLOA on the LLP license associated with the F/V Seafreeze Alaska will be adjusted to 295 feet (89.9 m) when NMFS approves a replacement vessel for it.

NMFS disagrees that the administrative record does not support the Council's recommendation that all LLP licenses associated with Amendment 80 replacement vessels be assigned a 295-foot (89.9 m) MLOA. Section 2.5.5 of the EA/RIR/IRFA for this action analyzes several options for length restrictions based on the LOA of Amendment 80 vessels. In addition to the 295-foot (89.9 m) MLOA restriction, the Council considered an option to limit the length of the replacement vessel to the LOA of the original qualifying vessel, an option to limit the LOA of a replacement vessel based on the MLOA of the LLP license used on the replacement vessel, and two suboptions that would modify the LOA of a vessel, not the MLOA of an LLP license.

At final action on Amendment 97, the Council selected the option that would limit the length overall of an Amendment 80 replacement vessel to 295 feet (89.9 m) LOA. This measure allows each replacement vessel to be as long as the largest vessel currently operating in the Amendment 80 fleet. In selecting the a limit of 295 feet (89.9 m) LOA for replacement vessels, the Council reviewed the LOAs of participating Amendment 80 vessels and determined that replacement vessels should not be longer than the longest vessel currently participating in the sector; in other words, no replacement vessel should exceed the LOA of the longest currently participating vessel. For the reasons provided in the preamble of the proposed rule, the Council determined that the LOA of the longest vessel currently participating in the sector would accommodate all of the safety, retention and utilization goals the Council wanted to achieve with replacement vessels while providing an upper bound on total fleet capacity. Therefore the Council determined and NMFS agrees that a limit of 295 feet (89.9 m) on the LOA for replacement vessels struck the appropriate balance between long enough without being too long.

The Council rejected the option that would have established no limit on the length of replacement vessels. As described in detail in Section 2.4.5 of the analysis for this action, the restriction of 295 feet (89.9 m) on the length of replacement vessels is intended to limit overall harvesting capacity of the fleet, reduce the potential for a race for fish in non-catch share fisheries managed by the Council, and encourage general improvements in harvesting capacity that any newly constructed vessel would provide over the vessel being replaced, while providing an upper boundary on total fleet capacity.

The Council has frequently recommended limits on vessel length as a proxy for controlling fishery effort. Although length is only one measure of a vessel's fishing capacity, it is a metric that is commonly used, considered to be a reasonable indicator of total harvest capacity, and is relatively easily measured and enforced compared to other vessel measurements (e.g., vessel hold capacity). The 295 feet (89.9 m) LOA limit implemented by this final rule is intended to improve the Council's and NMFS' ability to analyze and predict the maximum fishery impacts of the Amendment 80 fleet in future actions.

To ensure that the maximum size limit recommended by the Council can be implemented, NMFS is establishing an MLOA of 295 feet (89.9 m) for all Amendment 80 LLP licenses that are assigned to an Amendment 80 replacement vessel (see revised definition for Maximum LOA (MLOA) at § 679.2). This provision is intended to ensure that Amendment 80 LLP licenses accurately reflect the MLOA of the replacement vessel.

Although a vessel that is 296 feet LOA would not be approved as an Amendment 80 replacement vessel, the owner of the F/V Seafreeze Alaska is likely to benefit from a newly constructed vessel at its current LOA of 295 feet (89.9 m). The analysis for this action indicates that vessels with the longest LOA are likely to benefit from vessel replacement under

Amendment 97. Generally, all Amendment 80 vessels larger than 250 feet (76.2 m) LOA are long enough to incorporate a meal plant, fillet lines, or other improvements in vessel processing; however, any newly constructed, or newly rebuilt, replacement vessel is likely to have improved operational capabilities relative to existing vessels of the same length. A new vessel can incorporate improved hull design, processing plant construction, engines, electronics, fishing gear, and other advancements in marine design that improve efficiency and vessel safety.

NMFS made no change to the final rule in response to this comment.

Comment 11: NMFS should clarify that rebuilt vessels are eligible as Amendment 80 replacement vessels under this action, including the regulatory provisions that establish an MLOA of 295 feet (89.9 m) for all replacement vessels.

Response: NMFS agrees that rebuilt vessels, which are those vessels that have undergone a major conversion, are eligible to apply to NMFS for approval as an Amendment 80 replacement vessel. However, as described earlier, Amendment 80 replacement vessels must be classed and load lined or, if the vessel cannot be classed and load lined, the vessel must be enrolled in the U.S. Coast Guard ACSA program. Vessels must also have been rebuilt in the United States. Section 2.4.9 of the analysis for this action considered the impacts of using rebuilt Amendment 80 vessels for use as Amendment 80 replacement vessels. It is NMFS's understanding based on information provided by the U.S. Coast Guard that an Amendment 80 vessel owner who undertakes a major conversion of an Amendment 80 vessel to increase its size, address safety concerns, or otherwise improve its efficiency will no longer be eligible for the U.S. Coast Guard's ACSA certification program. Therefore, a rebuilt Amendment 80 vessel must be classed and load lined in order to meet the vessel safety requirements for Amendment 80 replacement vessels established by this rule.

All commercial fishing vessels that carry more than 16 people on board and are built or have undergone a major conversion must meet contemporary safety requirements. As fish processing vessels, newly rebuilt Amendment 80 vessels are required to be classed (see 46 CFR 28 Subpart D) and load lined (see 46 U.S.C. 5102). The analysis notes that age restrictions imposed by the classification societies preclude the vast majority of the Amendment 80 fleet from eligibility for certification as either load lined or classed. Given this information and the information presented in Section 2.4.9.1 of the analysis, NMFS has serious concerns as to whether a rebuilt Amendment 80 vessel could be classed and load lined. NMFS will not approve a vessel as an Amendment 80 replacement vessel if the vessel is not classed and load lined and is not enrolled in the U.S. Coast Guard ACSA program. Should a vessel owner choose to rebuild an existing Amendment 80 vessel, that vessel owner must apply to NMFS and NMFS must approve the vessel as an Amendment 80 replacement vessel prior to it being used as an Amendment 80 replacement vessel and prior to receiving an MLOA of 295 feet (89.9 m) on the LLP license associated with that vessel.