

and to mitigate or prevent the discharge, or the substantial threat of such a discharge; and

(6) Is submitted, and resubmitted in the event of any significant change, to the Federal Railroad Administrator (for tank cars), or to the Federal Highway Administrator (for cargo tanks) at 400 Seventh Street SW, Washington, DC 20590-0001.

(Approved by the Office of Management and Budget under control number 2137-0591)

#### **§ 130.33 Response plan implementation.**

If, during transportation of oil subject to this part, a discharge occurs—into or on the navigable waters of the United States; on the adjoining shorelines to the navigable waters; or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of, the United States—the person transporting the oil shall implement the plan required by § 130.31, in a manner consistent with the National Contingency Plan, 40 CFR part 300, or as otherwise directed by the Federal on-scene coordinator.

Issued in Washington, DC on June 3, 1996, under authority delegated in 49 CFR part 1. D.K. Sharma,

*Administrator, Research and Special Programs Administration.*

[FR Doc. 96-14611 Filed 6-14-96; 8:45 am]

BILLING CODE 4910-60-P

## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Chapter VI**

[Docket No. 960606161-6161-01; I.D. 051796E]

RIN 0648-XX63

#### **Limit on Fishery Management Plan Development; Public Law 104-134; Interpretation**

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

**ACTION:** Interpretation.

**SUMMARY:** NMFS is issuing this document to provide its interpretation of the limitations placed on the use of appropriated funds by the Department of Commerce and Related Agencies Appropriations Act of 1996 (Act) for fiscal year 1996. The Act states that no appropriated funds may be used to develop or implement new fishery management plans (FMPs), FMP amendments, or regulations that create

new individual fishing quota (IFQ), individual transferable quota (ITQ), or new individual transferable effort allocation programs, until offsetting fees to fund such programs are authorized under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The purpose of this interpretation is to provide guidance to the regional fishery management councils and the public on the programs for which funds may not be expended through the end of the fiscal year.

**EFFECTIVE DATE:** June 17, 1996.

**FOR FURTHER INFORMATION CONTACT:** Margaret F. Hayes, Assistant General Counsel for Fisheries, 301-713-2231.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The President signed the Act (Public Law 104-134) on April 26, 1996. The Act provides funds for the Department of Commerce through September 30, 1996. Section 210 of the Act states the following:

None of the funds appropriated under this Act or any other Act may be used to develop new fishery management plans, amendments or regulations which create new individual fishing quota, individual transferable quota, or new individual transferable effort allocation programs, or to implement any such plans, amendments or regulations approved by a Regional Fishery Management Council or the Secretary of Commerce after January 4, 1995, until offsetting fees to pay for the cost of administering such plans, amendments or regulations are expressly authorized under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). This restriction shall not apply in any way to any such programs approved by the Secretary of Commerce prior to January 4, 1995.

This provision is intertwined with bills currently pending in both Houses of Congress to reauthorize and amend the Magnuson Act. The House-passed bill, H.R. 39, would establish fees to be used to administer individual quota systems. The term "individual quota" is defined in section 16(b) of the House bill as "a grant of permission to harvest or process a quantity of fish in a fishery, during each fishing season for which the permission is granted, equal to a stated percentage of the total allowable catch for the fishery."

The Senate bill, S. 39, which has not yet passed the Senate, also would establish fees to fund an IFQ program. The bill (section 103) defines "individual fishing quota" to mean "a revocable Federal permit under a limited access system to harvest a quantity of fish that is expressed by a unit or units representing a percentage of the allowable catch of a fishery that

may be received or held for exclusive use by a person."

Congress' intent in section 210 of the Act apparently was to halt the development and implementation of any individual quota system—whether the quotas are transferable or not—pending passage of a law amending the Magnuson Act to establish fees to finance such systems. The Senate added the term "new individual transferable effort allocation program," to section 210 of the Act although that sort of effort control is not mentioned in either bill to amend the Magnuson Act.

##### **Interpretation**

NMFS interprets the term "individual fishing quota" as it is defined in S. 39. That definition is functionally similar to the definition of "individual quota" in H.R. 39. NMFS believes "individual transferable quota" is the same as an IFQ, with the additional aspect of transferability of quota among those eligible to hold ITQs. Neither term encompasses "community development quotas," allocations to western Alaska communities that are treated separately in both bills.

NMFS interprets "individual transferable effort allocation program" to mean systems allowing fishermen to transfer among themselves or consolidate units of effort, such as days at sea (DAS) or number of traps. Proposals for such programs have been discussed by the New England Fishery Management Council for the Atlantic sea scallop and American lobster fisheries.

##### **Programs Affected**

Because they are funded through Federal appropriations, the regional fishery management councils must suspend work until the end of the fiscal year on portions of FMPs, amendments, or regulations that relate to new IFQs, ITQs, or individual transferable effort allocation programs. NMFS has notified each council of pending proposals it believes are within the scope of this restriction, as follows:

**North Pacific Council:** (1) IFQs for the Alaska pollock fishery, whereby a vessel owner would be allocated annually a certain percentage of the pollock total allowable catch. (2) Vessel bycatch accounts, allocations of an allowable take of prohibited species bycatch to an individual vessel owner or to groups of vessel owners.

**Pacific Council:** Cumulative trip limits in the non-trawl sablefish fishery, whereby an allowable catch would be divided among a fixed number of permit holders, based either on historic harvest of the vessel or on an equal allocation

among all vessels. The cumulative trip limit is the equivalent of a percentage share the vessel owner is entitled to harvest.

*Gulf Council:* Red snapper ITQ amendment. While the amendment was approved and final regulations published in 1995, the ITQ system has not yet been implemented. Section 210 prohibits any work on implementing the system until the end of this fiscal year.

*Mid-Atlantic Council:* An ITQ system for mahogany quahogs. Although this provision is a modification of an approved ITQ system under Amendment 8 to the Surf Clam and Ocean Quahog FMP, its characteristics (e.g., the unit of allocation and the period of landings on which it is calculated) differ so substantially that it must be viewed as a new ITQ system.

*New England Council:* Aspects of proposed Amendment 6 to the Atlantic Sea Scallop FMP relating to transferability or consolidation of DAS, and proposed Amendment 5 to the American Lobster FMP relating to transferable quotas and traps.

#### Classification

This final rule is issued under the Magnuson Act, 16 U.S.C. 1801 *et seq.*

In that this rule merely interprets a provision of Public Law 104-134 without creating any new rights or duties, it is not subject to the requirement to provide prior notice and opportunity for public comment under 5 U.S.C. 553(b)(A). Similarly, as an interpretive rule, it is not subject to a 30-day delay in effective date pursuant to authority set forth at 5 U.S.C. 553(d)(2).

This rule has been determined to be not significant for the purposes of E.O. 12866.

Dated: June 11, 1996.

Gary Matlock,

*Program Management Officer, National Marine Fisheries Service.*

[FR Doc. 96-15323 Filed 6-14-96; 8:45 am]

BILLING CODE 3510-22-F

#### 50 CFR Part 675

[Docket No. 960129019-6019-01; I.D. 061096A]

#### Groundfish of the Bering Sea and Aleutian Islands Area; Pacific Cod by Vessels Using Trawl Gear

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

**ACTION:** Modification of a closure.

**SUMMARY:** NMFS is opening directed fishing for the Pacific cod fishery by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the first seasonal bycatch allowance of Pacific halibut apportioned to the trawl Pacific cod fishery category in the BSAI.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), June 14, 1996, until 12 noon, A.l.t., October 25, 1996.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS

according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

Directed fishing for Pacific cod by vessels using trawl gear in the BSAI was prohibited on May 14, 1996, (61 FR 24730, May 16, 1996) to prevent exceeding the first seasonal bycatch allowance of Pacific halibut apportioned to that fishery.

The Director, Alaska Region, NMFS, has determined that as of May 25, 1996, 89 metric tons of halibut mortality remain in the first seasonal bycatch allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by vessels using trawl gear in the BSAI.

All other closures remain in full force and effect.

#### Classification

This action is taken under 50 CFR 675.20 and is exempt from review under E.O. 12866.

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

Dated: June 11, 1996.

Richard H. Schaefer,

*Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 96-15257 Filed 6-12-96; 10:44 am]

BILLING CODE 3510-22-F