

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 960815223-6223-01; I.D. 081296A]

RIN 0648-A170

Fisheries of the Exclusive Economic Zone off Alaska; Allocations of Pacific Cod in the Bering Sea and Aleutian Islands Area

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 46 to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP). Amendment 46 would allocate the Bering Sea and Aleutian Islands Management Area (BSAI) Pacific cod total allowable catch (TAC) among vessels using trawl gear, fixed gear (hook-and-line and pot), and jig gear. This action also would provide authority for the fixed gear allocation of Pacific cod to be divided into seasonal allowances, and would allow any unused portion of one gear's allocation to be reallocated to other gear types. This action is necessary to respond to socioeconomic needs of the fishing industry that have been identified by the North Pacific Fishery Management Council (Council) and is intended to further the goals and objectives of the FMP.

DATES: Comments must be received by October 3, 1996.

ADDRESSES: Comments must be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel. Copies of the proposed FMP amendment and the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for Amendment 46 may be obtained from the North Pacific Fishery Management Council, 605 West Fourth Avenue, Suite 306, Anchorage, AK 99501; telephone: 907-271-2809.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907-586-7228.

SUPPLEMENTARY INFORMATION:

The domestic groundfish fisheries in the exclusive economic zone of the BSAI are managed by NMFS under the FMP. The FMP was prepared by the

Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations governing the groundfish fishery of the BSAI appear at 50 CFR parts 600 and 679.

Management Background and Need for Action

In 1994, NMFS implemented Amendment 24 to the FMP (59 FR 4009, January 28, 1994), which allocated the BSAI Pacific cod TAC among vessels using trawl gear, fixed gear (hook-and-line and pot) and jig gear. The Council designed Amendment 24 as a 3-year measure that is scheduled to expire at the end of 1996. The percentage allocations established by Amendment 24 for the 1994-96 fishing seasons were: Trawl gear, 54 percent; fixed gear, 44 percent; and jig gear, 2 percent. These percentages represented, roughly, the existing harvest percentages of the two major sectors, trawl, and hook-and-line, while specifically allocating 2 percent to jig gear. The 2 percent allocation to jig gear exceeded the existing harvest percentage taken by that gear type and was intended to allow for growth in the jig sector.

Amendment 24 also authorized NMFS to divide the fixed gear allocation of Pacific cod into three seasons of 4 months duration and allocate the Pacific cod TAC among the three seasons in proportions recommended by the Council. The Council took this action in response to hook-and-line industry representatives who argued for a seasonal allowance of the fixed gear allocation of Pacific cod to allow for a first and third season fishery when halibut bycatch rates, product quality, and markets are most advantageous. The second season (May 1 through August 31) is the least desirable period to harvest Pacific cod with hook-and-line gear based on these same criteria. Trawl industry representatives indicated that seasonal allowances were unnecessary for the trawl sector, because relatively low Pacific halibut bycatch rates, high catch-per-unit-of-effort, and stable market conditions early in the year support the prosecution of the Pacific cod trawl fishery during this period.

Lastly, Amendment 24 established authority for NMFS to reallocate Pacific cod from vessels using trawl gear to vessels using fixed gear and vice versa anytime during the fishing year the Director, Alaska Region, NMFS (Regional Director), determined that one gear group or the other would not be able to harvest its allocation of Pacific cod. Any projected unused portion of the jig gear allocation was to be reallocated to vessels using trawl and

fixed gear on or about September 1 of each fishing year.

The intent of Amendment 24 was to provide stability in the trawl, fixed, and jig gear fisheries by establishing designated allocations of the Pacific cod TAC among vessels using these different gear types. The Council believed that the stability provided through both gear type and seasonal allocations of Pacific cod would enable each sector of the industry to increase the net benefits received from the harvest of Pacific cod.

In December 1995, the Council began analysis of Amendment 46, which would extend the management measures authorized by Amendment 24 beyond 1996. Council staff prepared a draft EA/RIR for Amendment 46 to examine a range of possible allocations of Pacific cod to each gear type with specific attention to prohibited species catch (PSC) mortality, impacts on habitat, and discards of Pacific cod by various industry sectors. To guide the analysis of alternatives for Amendment 46, the Council drafted the following problem statement:

The Bering Sea/Aleutian Islands Pacific cod fishery continues to manifest many of the problems that led the Council to adopt Amendment 24 in 1993. These problems include compressed fishing seasons, periods of high bycatch, waste of resource, and new entrants competing for the resource due to crossovers allowed under the Council's moratorium program. Since the allocation of BSAI Pacific cod TAC between fixed gear, jig, and trawl gear was implemented in January 1994 when Amendment 24 went into effect, the trawl, jig and fixed gear components have harvested the TAC with demonstrably differing levels of PSC mortality, discards, and bycatch of non-target species. Management measures are needed to ensure that the Pacific cod TAC is harvested in a manner which reduces discards in the target fisheries, reduces PSC mortality, reduces nontarget bycatch of Pacific cod and other groundfish species, takes into account the social and economic aspects of variable allocations and addresses impacts of the fishery on habitat. In addition, the amendment will continue to promote stability in the fishery as the Council continues on the path towards comprehensive rationalization.

After contentious testimony from representatives for different sectors of the BSAI Pacific cod fishery during initial consideration of Amendment 46 in April 1996, the Council named an industry negotiating committee composed of representatives for the following sectors: Freezer/longliner, catcher longliner, pot vessel, factory trawler, shoreside delivery trawler, mothership delivery trawler, and shoreside processor. This industry negotiating committee, which convened in May 1996, was given the task of

drafting an allocation to each gear type that would be acceptable to all sectors of the BSAI Pacific cod fishery.

After 2 days of public meetings in Seattle, WA, the negotiating committee arrived at the following percentages: Fixed gear, 51 percent; trawl gear, 47 percent divided equally between catcher vessels and catcher/processors; and jig gear, 2 percent. These percentages were chosen because they closely represented the current harvest percentage taken by the trawl and fixed gear types under current halibut PSC limits while retaining the 2 percent allocation for jig gear.

The 50/50 split of the trawl gear allocation between catcher vessel and catcher/processors was arrived at through a separate negotiation by representatives for the different sectors of the trawl fleet. Catcher vessel representatives argued that directed fishing for Pacific cod by catcher/processors, as well as high levels of Pacific cod taken as bycatch by catcher/processors engaged in other directed fisheries, could preempt the catcher vessel sector, which is more dependent on directed fishing for Pacific cod. A separate allocation of Pacific cod to trawl catcher vessels would prevent preemption of catcher vessels by the catcher/processor sector. From 1992 through 1995, catcher vessels were responsible for 40 percent of the total trawl landings of Pacific cod, but harvested 54 percent of the Pacific cod taken by trawl vessels while engaged in directed fishing for Pacific cod. During the same time period, catcher processors were responsible for 74 percent of the Pacific cod taken as bycatch by trawl vessels while engaged in directed fishing for other species.

Because both the trawl and hook-and-line sectors are constrained by existing halibut PSC limits, the negotiating committee recognized that it would be unlikely that vessels using both gear types could exploit larger allocations of Pacific cod under their existing halibut PSC limits. The negotiating committee expected that operators of vessels using pot gear would be able to harvest the remaining TAC of Pacific cod once vessels using trawl and hook-and-line gear reached their halibut PSC limits.

At its June 1996 meeting, the Council approved unanimously the allocation percentages proposed by the industry negotiating committee as part of Amendment 46 to the FMP. The Council also extended without modification the other management measures established by Amendment 24, except for the date that any projected unused jig gear allocation would be reallocated to other gear types. The Council recommended

that NMFS reallocate any projected unused jig allocation to fixed gear on September 15 of each fishing year after hearing industry requests for a predictable date for the reallocation of the projected unused jig gear allocation. In contrast to Amendment 24, the Council chose not to establish a sunset date for Amendment 46.

Regulations Proposed under Amendment 46

The following summarizes the regulations proposed under Amendment 46.

1. The BSAI Pacific cod TAC would be allocated among gear types as follows: Fixed gear, 51 percent; trawl gear, 47 percent; and jig gear, 2 percent.

2. The BSAI Pacific cod TAC allocated to vessels using trawl gear would be further allocated 50 percent to catcher vessels and 50 percent to catcher/processors.

3. The authority for NMFS to divide the fixed gear allocation of Pacific cod into three seasons of 4 months duration would continue unchanged. The criteria to be used for determining the percentage of fixed gear TAC allocated to each season include: The seasonal distribution of prohibited species, the seasonal distribution of Pacific cod relative to prohibited species distribution, the expected variations in Pacific halibut bycatch rates throughout the fishing year, and the economic effects of any seasonal allowance of Pacific cod on the fixed gear fisheries.

4. The authority for NMFS to reallocate Pacific cod from vessels using trawl gear to vessels using fixed gear and vice versa anytime during the fishing year that the Regional Director determines that one gear group or the other would not be able to harvest its allocation of Pacific cod would continue unchanged.

5. Any portion of the Pacific cod TAC allocated to vessels using jig gear and projected by NMFS to be unused by the end of the fishing year would be reallocated to vessels using fixed gear on September 15 of each fishing year.

6. NMFS also proposes to implement a measure that would allow any unused fixed gear seasonal allowance to be reallocated in a manner determined by NMFS in annual consultation with the Council and that promotes the goals and objectives of the FMP. This measure would, for example, allow NMFS to reallocate unused fixed gear allocations from the first season to the third season when halibut bycatch rates, product quality, and markets are most advantageous.

Classification

Section 304(a)(1)(D) of the Magnuson Act requires that regulations proposed by a council be published within 15 days of receipt of the FMP amendment and regulations. At this time, NMFS has not determined that the FMP amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an EA for this FMP amendment that discusses the impact on the environment as a result of this rule. A copy of this EA is available from the Council (see **ADDRESSES**). The EA concluded that the distribution of fishing effort among different sectors of the fishing industry, as well as the spatial and temporal distribution of fishing effort within each sector of the industry, is unlikely to change as a result of this rule. As a consequence, fishing under this rule will not impact the environment to an extent and in a manner not already considered in the EA prepared for the 1996 TAC specifications.

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration as follows:

I certify that the attached proposed rule issued under authority of section 304(a) of the Magnuson Fishery Conservation and Management Act will not have a significant economic impact on a substantial number of small entities. The proposed rule would allocate the BSAI Pacific cod total allowable catch among vessels using trawl gear, fixed gear and jig gear. This action also would provide authority for the fixed gear allocation to be divided into seasonal allowances, and would allow any unused portion of one gear's allocation to be reallocated to other gear types. This action is necessary to replace the current Pacific cod allocations which were established by Amendment 24 to the FMP and which are scheduled to expire on January 1, 1997.

The percentage allocations in the proposed rule largely mirror existing harvest patterns and would not result in a change of more than 5 percent in overall gross revenues for any particular operation relative to the status quo. This action is expected to generate largely unquantifiable positive impacts including: Prohibited species bycatch reductions, increased amounts of cod available to cod target fisheries, allowances for growth of relatively clean fishing gears (such as pot gear), and overall stability

within and across industry sectors. The proposed rule would not change compliance costs or impose any additional paperwork or reporting requirements.

The Regional Director determined that fishing activities conducted under this rule will not affect endangered and threatened species listed or critical habitat designated pursuant to the Endangered Species Act in any manner not considered in prior consultations on the groundfish fisheries of the BSAI.

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: August 16, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority 16 U.S.C. 773 *et seq.*; 1801 *et seq.*

2. In § 679.20, paragraph (a)(7) is revised to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(7) *Pacific cod TAC, BSAI*—(i) *TAC by gear*. (A) The BSAI TAC of Pacific cod, after subtraction of reserves, will be allocated 2 percent to vessels using jig gear, 51 percent to vessels using hook-and-line or pot gear, and 47 percent to vessels using trawl gear.

(B) The portion of Pacific cod TAC allocated to trawl gear under paragraph (a)(7)(i)(A) of this section will be further allocated 50 percent to catcher vessels and 50 percent to catcher/processors as defined for the purposes of recordkeeping and reporting at § 679.2.

(C) The Regional Director may establish separate directed fishing allowances and prohibitions authorized under paragraph (d) of this section for vessels harvesting Pacific cod using jig gear, hook-and-line or pot gear, or trawl gear.

(ii) *Unused gear allocation*. If, during a fishing year, the Regional Director determines that vessels using trawl gear or hook-and-line or pot gear will not be able to harvest the entire amount of Pacific cod in the BSAI allocated to those vessels under paragraphs (a)(7)(i) or (a)(7)(iii) of this section, NMFS may reallocate the projected unused amount of Pacific cod to vessels harvesting Pacific cod using the other gear type(s) through notification in the Federal Register.

(iii) *Reallocation of TAC specified for jig gear*. On September 15 of each year, the Regional Director will reallocate any projected unused amount of Pacific cod in the BSAI allocated to vessels using jig

gear to vessels using hook-and-line or pot gear through notification in the Federal Register.

(iv) *Seasonal allowances*—(A) *Time periods*. NMFS, after consultation with the Council, may divide the TAC allocated to vessels using hook-and-line or pot gear under paragraph (a)(7)(i) of this section among the following three periods: January 1 through April 30; May 1 through August 31; and September 1 through December 31.

(B) *Factors to be considered*. NMFS will base any seasonal allowance of the Pacific cod allocation to vessels using hook-and-line and pot gear on the following information:

(1) Seasonal distribution of Pacific cod relative to prohibited species distribution.

(2) Variations in prohibited species bycatch rates in the Pacific cod fisheries throughout the fishing year.

(3) Economic effects of any seasonal allowance of Pacific cod on the hook-and-line and pot-gear fisheries.

(C) *Unused seasonal allowances*. Any unused portion of a seasonal allowance of Pacific cod to vessels using hook-and-line or pot gear will be reallocated to the remaining seasonal allowances during a current fishing year in a manner determined by NMFS, after consultation with the Council.

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