

### Correction of Publication

Accordingly, the publication on June 30, 2004, of the proposed regulations is corrected as follows:

#### § 32.62 [Corrected]

1. The listing for Cross Creeks National Wildlife Refuge on page 39661 in the first column in § 32.62, under A. Migratory Game Bird Hunting [Reserved], is corrected as follows:

#### Cross Creeks National Wildlife Refuge

*A. Migratory Game Bird Hunting.* We allow hunting of Canada geese (September season only) on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. The refuge is a day-use area only, with the exception of legal hunting/fishing activities.
2. You must possess and carry a valid refuge permit while hunting on the refuge.
3. We set and publish season dates and bag limits annually in the refuge Public Use Regulations available at the refuge office.
4. We prohibit hunting within 50 yards (45 m) of any building, public use road, or boat launching ramp.
5. We allow hunters access to the refuge from 1½ hours before legal sunrise to 1½ hours after legal sunset.
6. We prohibit the use of motorized off-road vehicles (e.g., ATVs) on the refuge.
7. We prohibit the use of horses or other animal conveyances on refuge hunts.
8. Youth hunters under age 16 must remain in sight and normal voice contact with an adult hunter age 21 or older. One adult hunter may supervise no more than two youth hunters.
9. We allow the use of dogs to retrieve geese.
10. You may use only portable blinds, and you must remove all boats, blinds, and decoys from the refuge at the end of each day.

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2. The listing for Tennessee National Wildlife Refuge on page 39662 in the third column in § 32.62, under A. Migratory Game Bird Hunting [Reserved], is corrected as follows:

#### Tennessee National Wildlife Refuge

*A. Migratory Game Bird Hunting.* We allow hunting of Canada geese (September season only) on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. The refuge is a day-use area only, with the exception of legal hunting/fishing activities.

2. We require a refuge hunt permit for all hunters age 16 and older. We charge a fee for all hunt permits. You must possess and carry a valid refuge permit while hunting on the refuge.

3. We set and publish season dates and bag limits annually in the refuge Public Use Regulations available at the refuge office.

4. We prohibit hunting within 50 yards (45 m) of any building, public use road, or boat launching ramp.

5. We allow access for goose hunting on the refuge 1½ hours before legal sunrise until 1½ hours after legal sunset.

6. We prohibit the use of motorized off-road vehicles (e.g., ATVs) on the refuge.

7. We prohibit the use of horses or other animal conveyances on refuge hunts.

8. Youth hunters under age 16 must remain in sight and normal voice contact with adult hunters age 21 or older. One adult hunter may supervise no more than two youth hunters.

9. We allow the use of dogs to retrieve geese.

10. You may use only portable blinds, and you must remove all boats, blinds, and decoys from the refuge at the end of each day.

\* \* \* \* \*

Dated: July 8, 2004.

Sara Prigan,

Service Federal Register Liaison.

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### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[I.D. 070704F]

RIN 0648-AR77

#### Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to the Annual Harvest Specifications Process for the Groundfish Fisheries of the Gulf of Alaska and the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The North Pacific Fishery Management Council (Council) has submitted Amendment 48 to the Fishery

Management Plan (FMP) for Groundfish of the Gulf of Alaska (GOA) and Amendment 48 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI) (Amendments 48/48). If approved, Amendments 48/48 would revise the administrative process used to establish annual harvest specifications for the groundfish fisheries of the GOA and the BSAI and would update the FMPs by revising the description of the groundfish fisheries and participants, revising the name of the BSAI FMP, revising text to simplify wording and correct typographical errors, and revising the description of the Council's Groundfish Plan Teams' responsibilities. This action is necessary to manage fisheries based on the best scientific information available, to provide for adequate prior public review and comment to the Secretary of Commerce (Secretary) on Council recommendations, to provide for additional opportunity for Secretarial review, to minimize unnecessary disruption to fisheries and public confusion, and to promote administrative efficiency. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMPs, and other applicable laws.

**DATES:** Comments on Amendments 48/48 must be submitted by September 13, 2004.

**ADDRESSES:** Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

• Mail to P.O. Box 21668, Juneau, AK 99802;

• Hand Delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, AK;

• E-mail to [4848NOA@noaa.gov](mailto:4848NOA@noaa.gov) and include in the subject line of the e-mail comments the document identifier: 48-48 NOA. E-mail comments, with or without attachments, are limited to 5 megabytes;

• FAX to 907-586-7557; or

• Webform at the Federal eRulemaking Portal:

[www.regulations.gov](http://www.regulations.gov). Follow the instructions at that site for submitting comments.

Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for Amendments 48/48 and the amendments may be obtained from the same mailing address above or from the

NMFS Alaska Region website at [www.fakr.noaa.gov](http://www.fakr.noaa.gov).

**FOR FURTHER INFORMATION CONTACT:**

Melanie Brown, 907-586-7228 or [melanie.brown@noaa.gov](mailto:melanie.brown@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Act requires that each Regional Fishery Management Council submit any FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** that the amendment is available for public review and comment.

**Harvest Specifications Process Revision**

Amendments 48/48 were unanimously recommended by the Council in October 2003. If approved by NMFS, these amendments would revise the administrative process used to establish annual harvest specifications for the groundfish fisheries of the BSAI and GOA. Harvest specifications establish specific limits on the commercial harvest of groundfish and are used to manage the groundfish fisheries. Harvest specifications include total allowable catch (TAC), acceptable biological catch (ABC), overfishing levels, and prohibited species catch (PSC) amounts, and apportionments thereof, which have been recommended by the Council. Currently, the regulations provide for annual harvest specifications that are effective January 1 through December 31. The goals in revising the harvest specifications process are to: (1) manage fisheries based on the best scientific information available, (2) provide for adequate prior public review and comment to the Secretary on Council recommendations, (3) provide for additional opportunity for Secretarial review, (4) minimize unnecessary disruption to fisheries and public confusion, and (5) promote administrative efficiency.

The current harvest specifications process requires publication of proposed, interim, and final rulemaking. Each October, the Council recommends proposed harvest specifications to NMFS which are reviewed and published in the **Federal Register** for public comment in December. In November, new biological information regarding the groundfish target species becomes available and is used to develop the Council's final harvest specifications recommendations for the fishing year starting in January. The Council makes its final harvest specifications recommendations to NMFS in December. NMFS reviews the

Council's recommended final harvest specifications and publishes the final specifications in the **Federal Register** in February or March of the following year.

Starting in January of the new fishing year, groundfish fisheries are managed using interim harvest specifications, pending publication of the final harvest specifications. These interim harvest specifications remain in place until superseded by final harvest specifications in February or March each year. The interim harvest specifications are required by § 679.20(c)(2) to be 25 percent or the first seasonal apportionment of the proposed TAC amounts for most groundfish target species and 25 percent of the proposed PSC amounts.

A number of statutory requirements must be met by NMFS to implement annual harvest specifications. Section 553(c) of the Administrative Procedure Act (APA) requires prior public review and comment on a proposed rule, including review and comment on the information used as the basis for the proposed rule, unless the prior opportunity for public review is waived pursuant to section 553(b)(3)(B) of the APA. National standard 2 in section 301(a)(2) of the Magnuson-Stevens Act requires the management of the groundfish fisheries to be based on the best scientific information available. Each year in October, proposed harvest specifications for the following year are developed based on either TAC amounts used in the current year for some species or on projections from the Stock Assessment and Fishery Evaluation (SAFE) reports written the previous year. The SAFE reports written in the previous year often are the best scientific information available in October for supporting the harvest specifications for the following year. The new SAFE reports completed in November are used by the Council to recommend final harvest specifications in mid-December, usually after publication in the **Federal Register** of the proposed harvest specifications.

The proposed and final specifications process normally requires 6 months to complete, yet only 2 weeks exist between the time the new final SAFE reports are available (mid-December) and the start of the fishing year on January 1. The Council's Groundfish Plan Teams develop the SAFE reports in November for the following fishing year based on the summer survey data and new analysis. These November SAFE reports are reviewed and approved by the Council in December and used as the scientific basis for its recommended harvest specifications. Because of this time constraint, the proposed harvest

specifications are completed before the new information supporting the final harvest specifications is available. The proposed harvest specifications and supporting information available for public review and comment can differ from the final harvest specifications and their supporting information.

For some species, the harvest specifications change little among years, such as TAC amounts for certain long-lived target groundfish species in the GOA. For other species, harvest specifications can change greatly between the proposed and final harvest specifications for various reasons. In some cases, adjustments are made based on the new information developed in the November SAFE reports. In the BSAI, the need to maximize the harvest of a particular groundfish species can cause changes between proposed and final TACs for a number of groundfish species to maintain the overall harvest at or below the 2 million optimal yield specified at § 679.20(a)(1)(i). Because the proposed harvest specifications and supporting information can differ from the final harvest specifications and information on which they are based, the current specifications process raises concerns that it may not provide adequate opportunity for prior public review and comment on the annual harvest specifications or on the supporting information used for the annual harvest specifications.

The use of interim specifications in the current specifications process also is problematic. Prior public review and comment on the interim specifications has been routinely waived for "good cause" pursuant to section 553(b)(B) of the APA. However, this practice raises serious questions of compliance with the APA's notice and comment requirements. See *Natural Resources Defense Council v. Evans*, 316 F.3d 904 (9th Cir. 2003). In addition, the interim harvest specifications also may provide inadequate harvest and PSC amounts for those fisheries that are prosecuted in the early part of the year (i.e., rock sole).

Amendments 48/48 would provide a process that allows for adequate prior public review and comment on the harvest specifications and supporting information and would allow the groundfish fisheries to be managed based on the best available scientific information. Each year in October, the Council would recommend to NMFS proposed harvest specifications that would be effective for up to 2 years. The rationale for harvest specifications that would be effective for up to 2 years is explained later in this document.

In consideration of the current stock assessment survey schedules, regulatory

procedures, and quality of stock assessment information for the BSAI and GOA target species, the proposed harvest specifications process would authorize specifications that would be effective for up to 24 months. NMFS would review the recommendations and publish proposed harvest specifications in November or early December, including detailed descriptions of what the final harvest specifications are likely to be and the new information anticipated to support them. In November, the new SAFE reports would be forwarded to the Council by the Council's Groundfish Plan Teams. The Council would consider the new SAFE reports, public comments on the proposed harvest specifications, and public testimony and then develop recommendations for the final harvest specifications in December. NMFS would review those recommendations and public comment on the proposed harvest specifications, and specifically determine if the final harvest specifications are a logical outgrowth of the proposed harvest specifications. If the final harvest specifications recommendations are consistent with applicable law and are a logical outgrowth of the proposed harvest specifications, the final harvest specifications may be published without additional public review and comment.

If the final harvest specifications recommendations are not a logical outgrowth of the proposed harvest specifications, an additional publication of proposed harvest specifications may be needed to provide an additional opportunity for prior public review and comment under the APA. In May or June of the following year, the final harvest specifications would be published based on the additional proposed harvest specifications and after consideration of public comment. Alternatively, depending upon the circumstances, NMFS may find "good cause" to waive the additional publication of proposed harvest specifications for prior public review and comment. In this case, the final harvest specifications likely would become effective in March.

To provide opportunity for an additional public comment period after the Council's final harvest specifications recommendation in December, the groundfish fisheries in the new fishing year would be managed on the specifications that had been published previously. These harvest specifications would be superseded by the new harvest specifications. This proposed specifications process would eliminate the need for the interim harvest specifications. Having harvest

specifications effective into the second fishing year would allow time for NMFS to complete an additional public review and comment period, if needed, while preventing disruption of the fisheries.

To provide consistency between the groundfish FMPs for the harvest specifications process and to provide flexibility during the harvest specifications process, Amendments 48/48 would allow specifications to be effective for up to 2 fishing years. The stock assessment models used for determining the harvest specifications would use 2-year projections for biomass and acceptable biological catch. The frequency of fishery resource surveys also affects whether specifications should be done on a more or less frequent basis. Allowing specifications to be effective for up to 2 years would fit well with the frequency of stock projections that must be used for the harvest specifications, and would provide the Council and NMFS the flexibility to adjust the specifications time periods in response to potential changes in the frequency of stock assessment surveys or other stock assessment data or administrative issues.

The Council recommended that harvest specifications for the hook-and-line gear and pot gear sablefish individual fishing quota (IFQ) fisheries be limited to the succeeding fishing year to ensure those fisheries are conducted concurrent with the halibut IFQ fishery. Having the sablefish IFQ fisheries concurrent with the halibut IFQ fishery would reduce the potential for discards of halibut and sablefish in these fisheries. The sablefish IFQ fisheries would remain closed at the beginning of each fishing year, until the final harvest specifications for the sablefish IFQ fisheries are in effect. The trawl sablefish fishery would be managed using harvest specifications for up to 2 years with the remaining target species in the BSAI and with GOA pollock, Pacific cod, and the "other species" complex.

#### Housekeeping Revisions to the FMPs

Amendment 48 to the BSAI FMP would revise the title of the FMP. The GOA FMP title is a more concise description of the document compared to the title used for the BSAI FMP. Definitions at 50 CFR 679.2 describe the BSAI as the "Bering Sea and Aleutian Islands management area." Consistency between the names of the groundfish FMPs and with the groundfish fishery regulations would reduce confusion for users of the documents. The BSAI FMP title would be revised to "The Fishery Management Plan for Groundfish of the

Bering Sea and Aleutian Islands Management Area." Catch histories and the socioeconomic and community descriptions also would be updated with more recent information. References supporting the descriptions would be added to the reference section of the FMP.

The GOA and BSAI FMPs contain references related to the management of foreign vessels and foreign processors in the groundfish fisheries. Foreign participation in the groundfish fisheries in the Exclusive Economic Zone off Alaska ended in 1990. Amendments 48/48 would revise the text throughout the FMPs to revise references to the management of foreign fishing vessels and foreign processors.

The description in the FMPs of the responsibilities of the Council's Groundfish Plan Teams would be revised with this action. The current FMPs require the Plan Teams to provide preliminary SAFE reports annually for the September Council meeting and to include PSC apportionments and allocations recommendations and economic analysis. The Council meeting was moved to October, and preliminary SAFEs are no longer developed by the Plan Teams. No information is available to the Plan Teams to allow recommendations of PSC apportionments and allocations. This information is usually available at the October and December Council meetings. No economists are on the Plan Teams, so an economic analysis cannot be produced by the Plan Teams for the October Council meeting. The amendments would revise the FMPs to limit the Plan Teams' responsibilities for the annual October Council meeting to providing the most recent information regarding proposed ABC amounts and overfishing levels to the Council. The amendments also would revise the FMP so that the Council may request the Plan Teams to recommend PSC allocations and apportionments among target fisheries and gear types and an economic analysis on the affects of such allocations. This revision would provide flexibility in the future, if the Plan Teams were to include an economist.

The information regarding skates in the GOA FMP would be updated with this action. In 2003, a directed fishery for skates developed in the GOA, targeting big and longnose skate species. The current FMP language does not list big and longnose skate species in the description of skates, and describes the harvest of skates as bycatch only. This action would update the fishery information regarding skates to identify species taken and the methods of

harvest of skates. Amendment 63 to the GOA FMP, approved by the Secretary on February 27, 2004, moved skates from the “other species” category to the target species category. Amendment 63 allows for the management of the skate directed fishery, and the Amendment 48 revision would provide a more accurate description of the skate fishery. Additional information on Amendment 63 is in the preamble to the proposed rule for Amendment 63 published in the **Federal Register** on January 6, 2004 (69 FR 614).

Amendments 48/48 also would revise the text in the GOA and BSAI FMPs to

correct typographical errors and to clarify wording.

Public comments are being solicited on proposed Amendments 48/48 through the end of the comment period (see **DATES**). A proposed rule that would implement the amendments will be published in the **Federal Register** for public comment at a later date. Public comments on the proposed rule must be received by the end of the comment period on the amendments in order to be considered in the approval/disapproval decision on the amendments. All comments received by the end of the comment period on the amendments, whether specifically

directed to the amendments or to the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendments. To be considered, comments must be received—not just postmarked or otherwise transmitted—by close of business on the last day of the comment period.

Dated: July 8, 2004.

**Alan D. Risenhoover,**  
*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
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