

offshore waters are closed at night between one half-hour after official sunset to one half-hour before official sunrise, except in June, July, and August when the offshore waters do not close. North Carolina does not presently have any nighttime closure of its ocean waters, although the Director of the Division of Marine Fisheries has the authority to set the hours of day for the shrimping season by proclamation, appropriate to the management of the fishery.

Request for Comments

NMFS is inviting public comment and seeking information to help determine what, if any, nighttime closures should be implemented under the Magnuson-Stevens Fishery Conservation and Management Act and/or Endangered Species Act as a fishery management tool, and/or to provide enhanced protection to sea turtles. In particular, NMFS wishes to receive quantitative data, or other information, on the extent of fishery effort reduction that would be achieved under various closure schemes. Information on the impacts, positive and negative, on affected fishermen as well as the conservation of marine turtles is also specifically requested. NMFS will conduct four public hearings in the South Atlantic states to solicit additional information.

The hearings are scheduled as follows:

1. May 11, 1998, at 7 p.m., Bolivia, NC
2. May 12, 1998, at 7 p.m., Charleston, SC
3. May 13, 1998, at 7 p.m., Brunswick, GA
4. May 14, 1998, at 7 p.m., Atlantic Beach, FL

The hearings will be held at the following locations:

1. North Carolina Cooperative Extension Service, Brunswick County Government Center, Agriculture Building, (Meeting Room), 25 Referendum Drive, Bolivia, NC 28422;
2. South Carolina Marine Resources Research Institute, (Auditorium), 217 Fort Johnson Road, Charleston, SC 29412;
3. University of Georgia Marine Extension Service Office, (Conference room), 715 Bay Street, Brunswick, GA 31520; and
4. Mayport Elementary School, (Cafeteria), 2753 Shangri-La Drive, Atlantic Beach, FL 32233.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids

should be directed to Charles A. Oravetz (see **FOR FURTHER INFORMATION CONTACT**).

Dated: April 24, 1998.

Rolland A. Schmitt,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 980331079-8079-01; I.D. 031198D]

RIN 0648-AK71

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Gulf of Alaska; Seasonal Apportionments of Pollock

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

ACTION: Proposed rule; proposed amendment to change seasonal apportionments of pollock; request for comments.

SUMMARY: NMFS proposes to change the seasonal apportionment of the pollock total allowable catch amount (TAC) in the combined Western and Central (W/C) Regulatory Areas of the Gulf of Alaska (GOA) by moving 10 percent of the TAC from the third fishing season, which starts on September 1, to the second fishing season, which starts on June 1. This seasonal TAC shift is a precautionary measure intended to reduce the potential impacts on Steller sea lions of pollock fishing under an increased 1998 TAC by reducing the percentage of the pollock TAC that is available to the commercial fishery during the fall and winter months, a period that is critical to Steller sea lions. This action is intended to promote the conservation and management objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: Comments must be received by May 15, 1998.

ADDRESSES: Comments on the proposed rule must be sent to Sue Salvesson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel. Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for

this action may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907-586-7228 or kent.lind@noaa.gov

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone of the GOA are managed by NMFS under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the groundfish fisheries of the GOA appear at 50 CFR part 600 and 50 CFR part 679.

Current groundfish regulations apportion the pollock TAC in the W/C Regulatory Areas among three statistical areas—610 (Shumagin), 620 (Chirikof), and 630 (Kodiak)—and divide the TAC apportioned to each statistical area into three seasonal allowances of 25 percent, 25 percent, and 50 percent of the TAC, which become available on January 1, June 1, and September 1, respectively. The proposed rule would shift 10 percent of the TAC from the third to the second season resulting in seasonal allowances of 25 percent, 35 percent, and 40 percent, respectively.

In December 1997, the Council approved a 1998 pollock TAC of 119,150 metric tons (mt) for the W/C Regulatory Areas of the GOA. This TAC represents a 60 percent increase from the 1997 pollock TAC of 74,400 mt. The GOA Plan Team and the Council's Scientific and Statistical Committee recommended the increased TAC based on survey and fishery data indicating increasing abundance and the presence of a large 1994 year class. Despite the projected increase in the pollock biomass available in the GOA, NMFS marine mammal biologists believe that precautionary action is warranted to shift increases in pollock fishing away from the fall and winter months, which are a critical feeding period for Steller sea lions particularly juveniles and adult females. Without action, 50 percent of the increased TAC would become available to commercial fishing during the September fishing season, substantially increasing the amount of fish that could be harvested in that season and extending the fishery further into that season, a time period considered particularly critical to Steller sea lions.

Current Status of Steller Sea Lions

NMFS has the authority to implement regulations necessary to protect Steller sea lions under the Endangered Species Act (ESA) and the Marine Mammal

Protection Act. Similarly, under the Magnuson-Stevens Act, NMFS has the authority to regulate fishing activities that may be affecting sea lions, directly or indirectly. In 1990, coincident with the listing of Steller sea lion as threatened under the ESA (55 FR 12645; April 5, 1990), NMFS: (1) Prohibited entry within 3 nautical miles of listed Steller sea lion rookeries west of 150° W. long.; (2) prohibited shooting at or near Steller sea lions; and (3) reduced the allowable level of take incidental to commercial fisheries in Alaskan waters. As a result of ESA section 7 consultations on the effects of GOA groundfish fisheries, NMFS implemented additional protective measures in 1991, 1992, and 1993 to reduce the effects of certain commercial groundfish fisheries on Steller sea lion foraging.

On June 4, 1997, NMFS separated the Steller sea lion population into eastern and western stocks and listed the western stock as endangered under the ESA (62 FR 24345, May 5, 1997). The eastern stock remains listed as threatened. The two stocks are separated at 144° W. long., or approximately at Cape Suckling, just east of Prince William Sound. This stock separation was based on genetic differences (mitochondrial DNA), different population trajectories (declining stock in the west, stable or slightly increasing stock in the east), as well as other factors. No additional management actions accompanied the 1997 change in ESA listing.

Since these measures were imposed, NMFS has been studying the relationship between biomass removed by fisheries and declines in the Steller sea lion population (Ferrero and Fritz, 1994). These studies have been inconclusive, showing both positive and negative correlations between harvest levels and Steller sea lion populations at various locations in the GOA and Aleutian Islands. Because Steller sea lions are long-lived with low reproductive rates, the effects, if any, of these protective measures on the Steller sea lion population may be slow to manifest themselves. For perspective, NMFS marine mammal biologists estimate that fishing restrictions may need to be in place a minimum of 10 years to observe effects in the population.

During June 1997, NMFS surveyed Steller sea lion populations in the W/C Regulatory Areas of the GOA and the eastern Aleutians Islands. The 1997 survey included rookery and haul-out sites from Outer Island off the Kenai Peninsula to the Umnak Island region. Numbers of non-pups at rookery and

haul-out trend sites in the survey area declined by 13.9 percent since 1994 and 10.3 percent since June 1996. The greatest relative declines were in the central GOA (Kenai Peninsula to the Semidi Islands), a region where non-pup numbers have declined each survey since 1989. Numbers also declined at trend sites in the western GOA and in the eastern Aleutian Islands, two regions where numbers are depressed but have remained relatively steady since 1989. Considering all sites surveyed each year since 1994 (approximately 50 percent more animals than at trend sites only), numbers of non-pups remained stable in the western Gulf and eastern Aleutian Islands (10,858 in 1994, 11,034 in 1996, 11,080 in 1997).

Importance of Pollock to Steller Sea Lions

At present, NMFS cannot fully characterize the foraging patterns and preferences of Steller sea lions. Nevertheless, pollock is a major component of their diet. Numerous studies of Steller sea lion diet suggest that, in many areas, pollock is their most frequent prey item (NMFS, 1995 Status review of the United States Steller Sea Lion [*Eumetopias jubatus*] population). The leading hypothesis for the decline of the Steller sea lion is the lack of available prey. Therefore, the availability of pollock is a matter of considerable management concern.

The pollock fishery in the Western Regulatory Areas occurs substantially within Steller sea lion foraging areas. Harvest data indicate significant pollock removals have occurred since 1977 from areas designated as critical habitat under the ESA. The percentage of total pollock catch in the GOA removed from within Steller sea lion critical habitat has increased significantly from less than 10 percent in the late 1970s to approximately 80 percent from 1983 to 1986. Except for a high removal in 1988 (approximately 90 percent), the percentage of the pollock catch removed from critical habitat dropped to approximately 60 percent or less of the total catch in 1987–91. Although as discussed above sea lion protective measures were put in place in the early 1990s, the percentage of total pollock removed from critical habitat has increased from the level seen in the late 1980s to 80 percent in 1993–96. This harvest has occurred principally within 20 nautical miles of rookeries and major haulouts. Additional information on the status of Steller sea lions and the pollock fishery in the GOA is available in the EA/RIR prepared for this action (See ADDRESSES).

Concerns Related to Current Pollock Seasonal Apportionments

The pollock fishery in the W/C Regulatory Areas of the GOA could adversely affect the foraging success of Steller sea lions in three major ways:

1. The fishery could deplete pollock stocks in a local geographic area of foraging importance due to aggregation of fishing effort;

2. Fishing pressure could alter the age structure of fish stocks targeted by a fishery, resulting in a shift in biomass from older to younger age classes; and

3. Fishing could alter the actual and relative abundance of pollock stocks in the GOA and increase the dominance of fish species that are less desirable for Steller sea lions. (NMFS, Biological Opinion on the Gulf of Alaska Groundfish Fishery Management Plan, 1991).

The first and third of these factors appear to have the greatest significance to Steller sea lions. The first factor may be more significant during late fall and winter, when sea lions, particularly pregnant females and newly-weaned pups, may be more nutritionally-stressed. Most Steller sea lions give birth to pups in June, and by October, some of the pups are beginning to wean. For Steller sea lions, weaning appears to be a protracted event. The post-weaning period may be a critical transition in a sea lion's life history, as pups begin foraging independently concurrent with more adverse winter conditions (Merrick and Loughlin, 1997).

The 60 percent increase in TAC in the W/C Regulatory Areas has raised two specific concerns related to the disproportionate percentage of TAC currently apportioned to the third fishing season, which opens September 1. The first concern is that, under a 60 percent TAC increase, the third pollock season is expected to last longer, increasing the time period during the third season in which sea lions may be in competition with the commercial fishery for pollock prey. Subsequent increases of TAC in future years could further aggravate this trend during a time period that may be critical to sea lions.

The second concern is that harvest of a disproportionate percentage of the TAC during a single time period may increase the likelihood that the commercial fishery may deplete the pollock resource in localized areas where Steller sea lions may forage. Since fishing activity is not distributed evenly throughout the W/C Regulatory Areas, (i.e., fishermen tend to fish as close to the processing plant as possible), there is a greater likelihood

that pollock stocks in certain localized areas could be depleted during the third season, which currently has twice the TAC allowance of the first and second seasons. While there is no evidence that such localized depletions have any effect on the health of the pollock stocks, the concern is that, if localized depletions occur near Steller sea lion feeding areas, they may adversely affect Steller sea lions.

Section 7 Consultation on the 1998 GOA Pollock TAC Specifications

Based on the concerns cited above, NMFS initiated ESA section 7 consultation on the 1998 GOA pollock TAC specifications. In a Biological Opinion dated March 2, 1998, NMFS described the proposed action as follows:

The proposed action is to conduct the Gulf of Alaska pollock fishery in 1998 with a 119,150 mt TAC divided among three seasons starting January 20, June 1, and September 1. Final specifications for the fishery will indicate a 25 percent, 25 percent, 50 percent TAC distribution for the three seasons, but the June 1 and September 1 TAC levels will be revised through rulemaking to a distribution of 35 percent and 40 percent for the last two seasons. This reapportionment will reduce the catch in the season beginning September 1 and shorten the duration of this season's pollock fishery. This measure will, therefore, minimize potential adverse effects of the fishery on Steller sea lions during the winter months, when weaned pups are learning to forage and adult females may be both pregnant and lactating.

The Biological Opinion concluded that the proposed increase in the TAC

for pollock in the combined Western and Central Regulatory Areas of the GOA fishery is not likely to jeopardize the continued existence of the western population of Steller sea lions and is not likely to destroy or adversely modify designated critical habitat for the species in Alaska.

Amendment to Final 1998 W/C Regulatory Area Pollock TAC Specifications

To implement the proposed rule in 1998, this action also would amend Table 3 of the 1998 final harvest specifications for groundfish of the GOA (63 FR 12027, March 12, 1998). Table 3 of the 1998 specifications would be revised as follows:

TABLE 3.—DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA (W/C GOA); BIOMASS DISTRIBUTION, AREA APPORTIONMENTS, AND SEASONAL ALLOWANCES

[ABC for the W/C GOA is 119,150 metric tons (mt). Biomass distribution is based on 1996 survey data. TACs are equal to ABC. Inshore and offshore allocations of pollock are not shown. ABCs and TACs are rounded to the nearest 5 mt.]

Statistical area	Biomass percent	1998 ABC = TAC	(mt)		
			Seasonal Allowances		
			First	Second	Third
Shumagin (610)	25	29,790	7,450	10,430	11,910
Chirikof (620)	42	50,045	12,510	17,515	20,020
Kodiak (630)	33	39,315	9,830	13,760	15,725
Total	100	119,150	29,790	41,705	47,655

Classification

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 that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities as follows:

In 1996, the most recent year for which vessel participation data are available, 1,508 vessels participated in the groundfish fisheries of the GOA; 1,254 longline vessels, 148 pot vessels, and 202 trawl vessels. All of these vessels may be considered small entities under the Regulatory Flexibility Act and, all of these vessels may encounter pollock in the course of their fishing activity and are therefore, affected by regulations governing the taking of pollock in the GOA. These small entities could experience impacts from this rule in one of two ways depending on whether or not they participate in the directed fishery for pollock in the W/C Regulatory Area. The 1,412 vessels that do not engage in directed fishing for pollock are nonetheless affected by regulations governing

the pollock fishery because improved retention/improved utilization regulations require that the vessels retain and utilize all pollock brought on board the vessel up to any maximum retainable bycatch amount in effect for pollock, regardless of whether pollock is the vessel's target fishery. A shift in pollock TAC from September to June would have the effect of shortening the September pollock fishery and lengthening the June pollock fishery. Consequently, vessels engaged in fisheries other than pollock will have a longer period in June during which all incidental pollock catch must be retained, and a shorter period in September during which all incidental catch of pollock must be retained. However, this shift is not expected to have any economic effect on vessels not engaged in directed fishing for pollock because all non-pollock vessels maintain incidental catch rates for pollock that are below the maximum retainable bycatch amount regardless of whether the pollock fishery is open or closed.

Because potential economic impacts would fall primarily on the vessels engaged in directed fishing for pollock, it is necessary to consider these entities as a separate universe for purposes of the Regulatory Flexibility Act. In 1996, 96 vessels, all of them trawl catcher vessels, participated in the directed fishery for pollock in the GOA. All of these vessels are considered small entities and all could experience economic impacts as a

result of this rule. The projected exvessel value of the 1998 pollock fishery in the combined W/C Regulatory Area is \$25,670,006 under the status quo, and \$25,144,792 under the proposed action, which represents a 2 percent reduction in exvessel value from the status quo. Therefore, the 96 vessels in the GOA that engage in directed fishing for pollock may be expected to experience a 2 percent reduction in the exvessel value of their pollock catch under the proposed action, relative to the status quo. The actual impact on an individual vessel's gross annual revenue would vary depending on how much of its total annual revenue derives from the pollock fishery. Most vessels that engage in directed fishing for pollock participate in other groundfish fisheries and some also participate in crab and salmon fisheries as well. Therefore, in no case would the effect of the proposed action be a decrease greater than 2 percent of a vessel's gross revenue. This reduction in gross revenue relative to the status quo is not expected to force any small entities out of business, especially given that the 60 percent increase in pollock TAC for 1998 will result in a substantial increase in revenues to the pollock fishery relative to 1997.

Because a reapportionment of pollock TAC under the proposed action would not result in a reduction of gross annual revenue of more than 2 percent for any vessel in the fishery, would not increase total costs of

production, and would not increase total costs of production, and would not increase compliance costs for small entities compared with compliance costs as a percent of sales for large entities, this action would not have a significant economic impact on a substantial number of small entities. Consequently, an initial regulatory flexibility analysis was not prepared.

Copies of the EA/RIR are available from NMFS (see **ADDRESSES**).

A formal section 7 consultation under the Endangered Species Act was initiated for the 1998 final specifications for groundfish of the GOA. In a biological opinion dated March 2, 1998, the Assistant Administrator for Fisheries, NOAA, determined that fishing activities conducted under this proposed rule are not likely to jeopardize the continued existence of any endangered or threatened species

under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 24, 1998.

Rolland A. Schmitten,

*Assistant Administrator for Fisheries,
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 part 679 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 773 *et seq.*, and 3631 *et seq.*

2. In § 679.20, paragraph (a)(5)(ii)(B) is revised to read as follows:

§ 679.20 General limitations.

(a) * * *

(5) * * *

(ii) * * *

(B) *Seasonal allowances.* Each apportionment will be divided into three seasonal allowances of 25 percent, 35 percent, and 40 percent of the apportionment, respectively, corresponding to the three fishing seasons defined at § 679.23(d)(2).

* * * * *

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