

Dated: December 31, 2007

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213033-7033-01]

RIN 0648-XE78

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2008 Bering Sea Pollock Total Allowable Catch Amount

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

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2008 total allowable catch amount (TAC) for the Bering Sea pollock fishery. This action is necessary because NMFS has determined this TAC is incorrectly specified. This action will ensure the Bering Sea pollock TAC does not exceed the appropriate amount based on the best available scientific information for pollock in the Bering Sea subarea. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP).

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), December 31, 2007, through 2400 hrs, A.l.t., December 31, 2008, unless otherwise modified or

superseded through publication of a notification in the **Federal Register**.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 15, 2008.

ADDRESSES: You may submit comments, identified by "RIN 0648-XE78," by any one of the following methods:

- Mail to: P.O. Box 21668, Juneau, AK 99802

- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>

- FAX to 907-586-7557, Attn: Ellen Sebastian

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands (BSAI) according to the FMP prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 pollock TAC in the Bering Sea subarea was set at 1,318,000 metric tons (mt) by the 2007 and 2008 harvest specification for groundfish in the BSAI (72 FR 9451, March 2, 2007).

In December 2007, the Council recommended a 2008 pollock TAC of 1,000,000 mt for the Bering Sea subarea. This amount is less than the 1,318,000 mt established by the 2007 and 2008 harvest specification for groundfish in the BSAI (72 FR 9451, March 2, 2007). The TAC recommended by the Council is based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2007, which NMFS has determined is the best available scientific information for this fishery.

Steller sea lions occur in the same location as the pollock fishery and are listed as endangered under the Endangered Species Act (ESA). Pollock is a principal prey species for Steller sea lions in the BSAI. The seasonal apportionment of pollock harvest is necessary to ensure the groundfish fisheries are not likely to cause jeopardy of extinction or adverse modification of critical habitat for Steller sea lions. The regulations at § 679.20(a)(5)(i)(A) specifies how the pollock TAC shall be apportioned.

In accordance with § 679.25(a)(2)(i)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2007 SAFE report for this fishery, the current Bering Sea pollock TAC is incorrectly specified. Consequently, the Regional Administrator is adjusting the 2008 pollock TAC to 1,000,000 mt in the Bering Sea subarea.

Pursuant to § 679.20(a)(5), Table 3 of the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007) is revised for the 2008 pollock TACs consistent with this adjustment.

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TABLE 3—2007 AND 2008 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA)¹

[Amounts are in metric tons]

Area and sector	2007 Allocations	2007 A season ¹		2007 B season ¹	2008 Allocations	2008 A season ¹		2008 B season ¹
		A season DFA	SCA harvest limit ²	B season DFA		A season DFA	SCA harvest limit ²	B season DFA
Bering Sea subarea	1,394,000	n/a	n/a	n/a	1,000,000	n/a	n/a	n/a
CDQ DFA	139,400	55,760	39,032	83,640	100,000	40,000	28,000	60,000
ICA ¹	33,129	n/a	n/a	n/a	31,500	n/a	n/a	n/a
AFA Inshore	610,736	243,894	170,726	366,841	434,250	173,700	121,590	260,550
AFA Catcher/Processors ³	488,588	195,115	136,581	293,473	347,400	138,960	97,272	208,440
Catch by C/Ps	447,058	178,531	n/a	267,796	317,871	127,148	n/a	190,723
Catch by CVs ³	41,530	16,585	n/a	24,877	29,529	11,812	n/a	17,717
Unlisted C/P Limit ⁴	2,443	976	n/a	1,463	1,737	695	n/a	1,042
AFA Motherships	122,147	48,779	34,145	73,368	86,850	34,740	24,318	52,110
Excessive Harvesting Limit ⁵	213,757	n/a	n/a	n/a	151,988	n/a	n/a	n/a
Excessive Processing Limit ⁶	366,441	n/a	n/a	n/a	260,550	n/a	n/a	n/a
Total Bering Sea DFA	1,221,471	487,788	341,452	733,682	868,501	347,399	243,180	521,100
Aleutian Islands subarea ¹	19,000	n/a	n/a	n/a	19,000	n/a	n/a	n/a
CDQ DFA	1,900	760	n/a	1,140	1,900	760	n/a	1,140
ICA	1,600	800	n/a	800	1,600	800	n/a	800
Aleut Corporation	15,500	15,500	n/a	0	15,500	15,500	n/a	0
Bogoslof District ICA ⁷	10	n/a	n/a	n/a	10	n/a	n/a	n/a

¹ Pursuant to § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock, after subtraction for the CDQ DFA (10 percent) and the ICA (2.8 percent), is allocated as a DFA as follows: inshore sector - 50 percent, catcher/processor sector - 40 percent, and mothership sector - 10 percent. In the Bering Sea subarea, 40 percent of the DFA is allocated to the A season (January 20-June 10) and 60 percent of the DFA is allocated to the B season (June 10-November 1). Pursuant to § 679.20(a)(5)(iii)(B)(2)(i) and (ii), the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second the ICA (1,600 mt), is allocated to the Aleut Corporation for a directed pollock fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the directed pollock fishery.

² In the Bering Sea subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of SCA before April 1 or inside the SCA after April 1. If less than 28 percent of the annual DFA is taken inside the SCA before April 1, the remainder will be available to be taken inside the SCA after April 1.

³ Pursuant to § 679.20(a)(5)(i)(A)(4), not less than 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

⁴ Pursuant to § 679.20(a)(5)(i)(A)(4)(iii), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

⁵ Pursuant to § 679.20(a)(5)(i)(A)(6), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the pollock DFAs.

⁶ Pursuant to § 679.20(a)(5)(i)(A)(7), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the pollock DFAs.

⁷ The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only, and are not apportioned by season or sector.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would

allow for harvests that exceed the appropriate allocations for pollock based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 13, 2007, and additional time for prior public comment would result in conservation concerns for the ESA-listed Steller sea lions.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of

prior notice and opportunity for public comment.

Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until January 15, 2008.

This action is required by § 679.22 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: December 31, 2007.

William D. Chappell

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
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