

**List of Subjects in 50 CFR Part 660**

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: December 4, 2006.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 660 as follows:

**PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC**

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.505, add paragraph (n) to read as follows:

**§ 660.505 Prohibitions.**

\* \* \* \* \*

(n) When fishing for CPS, deploy a net if a southern sea otter is observed within the area that would be encircled by the purse seine net.

3. Section 660.520 is added to read as follows:

**§ 660.520 Reporting requirements.**

(a) *Otter interaction.* (1) If a southern sea otter is entangled in a net, regardless of whether the animal is injured or killed, the vessel operator must report this interaction within 24 hours to the Regional Administrator.

(2) While fishing for CPS, vessel operators must record all observations of otter interactions (defined as otters within encircled nets or coming into contact with nets or vessels, including but not limited to entanglement) with their purse seine net(s) or vessel(s). With the exception of an entanglement, which must be initially reported as described in paragraph (a)(1) of this section, all other observations must be reported within 20 days to the Regional Administrator.

(3) When contacting NMFS after an interaction, vessel operators must provide the location (latitude and longitude) of the interaction and a description of the interaction itself. If available, location information should also include water depth, distance from shore, and relation to port or other landmarks. Descriptive information of the interaction should include: whether or not the otters were seen inside or outside the net; if inside the net, had the net been completely encircled; whether any otters came in contact with either

the net or the vessel; the number of otters present; duration of interaction; otter's behavior during interaction; measures taken to avoid interaction.

(b) [Reserved]

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

[I.D. 112006I]

RIN 0648-AU48

**Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod Allocations in 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 85 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) to NMFS for review. If approved, Amendment 85 would revise the current Bering Sea and Aleutian Islands management area (BSAI) Pacific cod allocations of total allowable catch (TAC) among various harvest sectors, modify the management of Pacific cod incidental catch in other non-target fisheries, eliminate the groundfish reserve for Pacific cod, increase the percentage of the BSAI Pacific cod TAC apportioned to the Community Development Quota (CDQ) Program, and add a new appendix to the FMP that summarizes the Consolidated Appropriations Act of 2005. Amendment 85 is necessary to reduce uncertainty about the availability of yearly harvests within sectors caused by reallocations, and to maintain stability between sectors in the BSAI Pacific cod fishery. This would be accomplished by establishing allocations that more closely reflect actual use by sector than do current allocations while considering socioeconomic and community factors, thus reducing the need for reallocations during the fishing year. This proposed amendment also is necessary to implement recent changes to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that require a

directed fishing allocation of 10 percent to the CDQ Program upon the establishment of a sector allocation. This action is intended to promote the goals and objectives of the Magnuson-Stevens Act, the FMP, and other applicable laws. The amendment is available for public review and comment.

**DATES:** Comments on Amendment 85 must be received on or before February 5, 2007.

**ADDRESSES:** Send written comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Walsh, Records Officer. Comments may be submitted by:

• Hand delivery: 709 West 9th Street, Room 420A, Juneau, AK;

• E-mail: 0648-AU48-BSA85-

NOA@noaa.gov. Include in the subject line the following document identifier:

“Pacific cod RIN 0648 AU48.” E-mail comments, with or without attachments, are limited to 5 megabytes;

• Fax: 907-586-7557;

• Mail: P.O. Box 21668, Juneau, AK

99802-1668; or

• Webform at the Federal eRulemaking Portal: <http://www.regulations.gov>.

Follow the instructions at that site for submitting comments.

Copies of the Amendment 85 Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from the NMFS Alaska Region website at [www.fakr.noaa.gov](http://www.fakr.noaa.gov) or from the mailing and street addresses listed above.

**FOR FURTHER INFORMATION CONTACT:**

Becky Carls, 907-586-7228 or [becky.carls@noaa.gov](mailto:becky.carls@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Act requires that each regional fishery management council submit any FMP or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** that the FMP or amendment is available for public review and comment. This requirement is satisfied by this notice of availability for Amendment 85.

The BSAI Pacific cod TAC, after subtraction of reserves, currently is subdivided, or allocated, among eight non-CDQ fishing industry sectors based on the type of fishing gear used pursuant to regulations at 50 CFR 679.20(a)(7). Basically, these gear

sectors include trawl gear, fixed gear (hook-and-line and pot), and jig gear. These basic allocations are further subdivided between catcher/processor vessels (CPs) that process their catch and catcher vessels (CVs) that catch fish but do not process it, and by length of vessel in some cases. Some allocations

are further apportioned between seasons. The purpose of these allocations and apportionments is to prevent one industry sector from unfairly affecting the harvesting opportunities of other sectors and to ensure temporal dispersion of harvest to protect Steller sea lions. Several FMP

amendments, implemented beginning in 1994, have allocated Pacific cod among these harvesting sectors. The previous and current allocations by sector, and those proposed under Amendment 85, are summarized in the following table.

PERCENT SECTOR ALLOCATIONS BY AMENDMENT OF BSAI PACIFIC COD NON-CDQ TAC

Sector	Amendment 24 (59 FR 4009, January 28, 1994)	Amendment 46 (61 FR 59029, No- vember 20, 1996)	Amendment 64 (65 FR 51553, Au- gust 24, 2000)	Amendment 77 (68 FR 49416, August 18, 2003)(Current)	Proposed Amendment 85
Jig	2.0	2.0	2.0	2.0	1.4
Hook-and-line/pot CV < 60ft (18.3 m) LOA	44.0	51.0	0.7	0.7	2.0
Hook-and-line CV ≥ 60ft (18.3 m) LOA			0.2	0.2	0.2
Hook-and-line CP			40.8	40.8	48.7
Pot CP			9.3	1.7	1.5
Pot CV ≥ 60ft (18.3 m) LOA				7.6	8.4
Trawl CV	54.0	23.5	23.5	23.5	22.1
AFA trawl CP		23.5	23.5	23.5	2.3
Non-AFA trawl CP					13.4

Abbreviations: AFA = American Fisheries Act and LOA = length overall.

The BSAI Pacific cod non-CDQ TAC currently is fully distributed among eight competing harvest sectors. The Pacific cod TAC allocations and apportionments for 2006 and 2007 are located in Table 5 of the groundfish specifications published March 3, 2006 (71 FR 10900), and may be changed as necessary during any fishing year pursuant to 50 CFR 679.20(a)(7)(ii) and 679.25(a).

Under the existing allocations, one or more sectors are typically unable to harvest their annual allocation of the Pacific cod TAC. To provide an opportunity for the full harvest of the BSAI Pacific cod non-CDQ TAC, existing allocations of Pacific cod that are projected to be unharvested by some sectors are annually reallocated by NMFS to other sectors. Since 1994, NMFS has reallocated Pacific cod each year from the trawl and jig sectors to fixed gear sectors. In 2002 and in 2004, reallocations also were made from the pot gear sectors to the hook-and-line CP sector. Reallocations within gear types (e.g., trawl CPs to trawl CVs, or hook-and-line CVs to hook-and-line CPs) have occurred less frequently and in lower amounts. Unharvested amounts typically result from gear specific PSC limitations closing directed fishing for Pacific cod, low catch rates during

certain times of the year that can result from seasonal apportionments of the Pacific cod TAC, or insufficient effort by a sector.

In developing Amendment 85, the Council determined that current allocations do not correspond with actual dependence and use by the existing sectors, as demonstrated by the need for annual reallocations. Reallocations maintain a level of uncertainty for some sectors regarding the amount of Pacific cod available for harvest. The Council expects that uncertainty to decrease due to the revisions to the Pacific cod non-CDQ allocations under this proposed amendment. Members of various gear sectors expressed concern that the current allocations are overdue for review, as the overall division of TAC among the trawl, jig, and fixed gear sectors has been in place since 1997. Participants in the BSAI Pacific cod fishery that have made significant investments and have a long-term dependence on the resource, assert that they need enhanced stability in the sector allocations.

Under Amendment 85, the Council selected nine individual non-CDQ sectors to receive separate BSAI Pacific cod non-CDQ TAC allocations (see table above). These sectors are jig, fixed gear

(pot and hook-and-line gear) CVs less than 60 ft (18.3 m) length overall (hereafter, < 60 ft LOA), hook-and-line CVs greater than or equal to 60 ft LOA (hereafter, ≥ 60 ft LOA), hook-and-line CPs, pot CVs ≥ 60 ft LOA, pot CPs, trawl CPs, and trawl CVs. The Council selected allocations using catch histories from 1995 through 2003 and other socio-economic and community considerations. The Council determined that the new allocations better reflect actual dependency and use by sector, with specific consideration to allow for additional growth in the small boat, entry-level sectors (fixed gear CVs < 60 ft LOA and jig). The primary objective of the Council in revising the BSAI Pacific cod non-CDQ TAC allocations to each sector was to reduce the level and frequency of annual reallocations, and thus enhance sector stability so that each sector may better plan its fishing year and operate more efficiently.

The proposed rule to implement Amendment 85 would make the following changes in regulations for the management of the BSAI directed Pacific cod fishery:

- Increase the percentage of the BSAI Pacific cod TAC apportioned to the CDQ Program.

- Revise the allocations of BSAI Pacific cod non-CDQ TAC among various gear sectors.
- Modify the management of Pacific cod incidental catch that occurs in other groundfish fisheries.
- Eliminate the Pacific cod nonspecified reserve.
- Establish a hierarchy for the reallocation of projected unused sector allocations to other sectors.
- Adjust the seasonal allowances of Pacific cod to various sectors.
- Subdivide among sectors the annual PSC limits apportioned to the Pacific cod trawl and hook-and-line gear fisheries.
- Modify the sideboard restrictions for Pacific cod that are applied to the CP vessels listed as eligible under the American Fisheries Act (AFA).
- Revise the definition for AFA trawl catcher/processor and add definitions for hook-and-line catcher/processor, non-AFA trawl catcher/processor, and pot catcher/processor.

Two additional pieces of Federal legislation affect Amendment 85. First, on December 8, 2004, the President signed into law the Consolidated Appropriations Act of 2005 (Act; Public Law 108-447). With respect to fisheries off Alaska, the Act establishes catcher processor sector definitions for participation in: (1) the catcher processor subsectors of the BSAI non-pollock groundfish fisheries, and (2) the BSAI Catcher Processor Capacity Reduction Program. The following subsectors are defined in section 219(a) of the Act and are not repeated here: AFA trawl catcher processor; non-AFA trawl catcher processor; longline catcher processor; and pot catcher processor.

Section 219(a) of the Act also defines “non-pollock groundfish fishery” as target species of Atka mackerel, flathead sole, Pacific cod, Pacific ocean perch, rock sole, turbot, or yellowfin sole harvested in the BSAI. Thus, the Act provides the qualification criteria that each participant in the CP subsectors

must meet in order to operate as a CP in the BSAI non-pollock groundfish fishery and/or participate in the BSAI Catcher Processor Capacity Reduction Program.

The Act includes numerous provisions that are not related to the management of groundfish and crab fisheries off Alaska. Only the portions of the legislation related to eligibility of the catcher processor subsectors would be provided for reference in a new appendix to the FMP, Appendix J. The portions of the legislation authorizing and governing the development of the BSAI Catcher Processor Capacity Reduction Program would not be provided in the appendix.

Second, the Coast Guard and Maritime Transportation Act of 2006 (Public Law 109-241), signed into law on July 11, 2006, amended section 305(i)(1) of the Magnuson-Stevens Act. Section 305(i)(1)(B)(ii)(I) of the Magnuson-Stevens Act now requires that a directed fishing allowance of 10 percent be allocated to the CDQ Program upon the establishment of sector allocations in a fishery. Currently, the CDQ Program receives a fishing allocation of 7.5 percent of the Pacific cod TAC, as the CDQ reserve, that is used by CDQ groups for directed fishing for Pacific cod (targeted fishing for Pacific cod), plus incidental catch (Pacific cod that are caught and retained while targeting other species) and bycatch (Pacific cod that are caught and released while targeting other species). Because Amendment 85, if approved, would establish sector allocations in the BSAI Pacific cod fishery, this action would allocate 10 percent of the BSAI Pacific cod TAC to the CDQ reserve as a directed fishing allowance. The 10 percent directed fishing allocation of Pacific cod to the CDQ reserve is only for directed fishing and does not include amounts of Pacific cod needed for incidental catch or bycatch in other CDQ groundfish fisheries. Therefore, this proposed amendment also would

allocate a CDQ incidental catch allowance for Pacific cod to the CDQ reserve. Currently, the CDQ reserve is deducted from the Pacific cod TAC before the remaining Pacific cod TAC is allocated to the other fishing sectors. As intended by the Council, this amendment would continue this procedure: the 10 percent directed fishing allowance and the CDQ incidental catch allowance would be subtracted from the Pacific cod TAC before allocations of Pacific cod are made to the non-CDQ sectors.

Public comments are being solicited on proposed Amendment 85 through the end of the comment period stated (see **DATES**). A proposed rule to implement Amendment 85 will be published in the **Federal Register** for public comment, following NMFS' evaluation under Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the end of the comment period on Amendment 85 to be considered in the approval/disapproval decision on the amendment. All comments received by the end of the comment period on Amendment 85, whether specifically directed to the amendment or the proposed rule, will be considered in the decision to approve, partially approve, or disapprove the proposed amendment. Comments received after the comment period for the amendment will not be considered in that decision. To be considered, written comments must be received by NMFS, not just postmarked or otherwise transmitted, by the close of business on the last day of the comment period.

**Authority:** 16 U.S.C. 773 *et seq.*; 1540(f); 1801 *et seq.*; 1851 note; 3631 *et seq.*

Dated: November 30, 2006.

**James P. Burgess,**

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