

[Federal Register: January 28, 1994]

DEPARTMENT OF COMMERCE 50 CFR Part 675 [Docket No. 931075-4012; I.D. 100893A]
RIN 0648-AF47

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; final apportionments of the 1994 Pacific cod total allowable catch among gear types and seasons.

SUMMARY: NMFS announces the approval of Amendment 24 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and issues final regulations to implement the amendment that allocates the Pacific cod total allowable catch (TAC) among vessels using trawl, hook-and-line or pot gear, and jig gear through 1996. These regulations also authorize seasonal apportionments of the portion of Pacific cod TAC allocated to vessels using hook-and-line or pot gear. Consistent with the regulations implementing Amendment 24, NMFS also specifies 1994 gear allocations and seasonal apportionments of the amount of the 1994 Pacific cod TAC allocated to vessels using hook-and-line or pot gear through 1996. This action is necessary to allocate Pacific cod among specified gear groups to respond to socioeconomic needs of the fishing industry that have been identified by the North Pacific Fishery Management Council (Council). It is intended to promote management and conservation of groundfish and other fish resources and to further the goals and objectives contained in the FMP.
EFFECTIVE DATE: February 28, 1994.

ADDRESSES: Copies of Amendment 24 and the environmental assessment/ regulatory impact review/final regulatory impact analysis (EA/RIR/FRFA) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510 (telephone 907-271-2809).

FOR FURTHER INFORMATION CONTACT: Susan J. Salvesson, Fisheries Management Division, Alaska Region, NMFS at 907-586-7228.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone of the BSAI are managed by the Secretary of Commerce (Secretary) in accordance with the FMP. The FMP was prepared by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations authorized under the FMP that pertain to the U.S. groundfish fisheries appear at 50 CFR parts 620 and 675.

At its June 1993 meeting, the Council adopted Amendment 24 and recommended that NMFS prepare rulemaking to implement the amendment. A notice of availability of Amendment 24 was published in the Federal Register on October 15, 1993 (58 FR 53497), and invited comment on the amendment through December 7, 1993. No written comments were received. A proposed rule to implement Amendment 24 was published in the Federal Register October 27, 1993 (58 FR 57803). Comments on the proposed rule were invited through December 6, 1993. Five letters addressing eight comments were received and are summarized and responded to in the Response to Comments section, below.

Amendment 24 was approved by the Secretary of Commerce on January 5, 1994, under section 304(b) of the Magnuson Act. This amendment establishes FMP authority to allocate the Pacific cod TAC among vessels using different gear types and to seasonally apportion gear allocations of Pacific cod. Upon reviewing the reasons for Amendment 24, and the comments on the proposed rule to implement it, NMFS has determined that this action is necessary for fishery conservation and management and implements the following three measures through December 31, 1996, under authority of Amendment 24.

1. The BSAI Pacific cod total allowable catch (TAC) is allocated annually among gear types as follows: 2 percent to vessels using jig gear; 44 percent to vessels using hook-and-line or pot gear; and 54 percent to vessels using trawl gear. In monitoring the use of these gear allocations, all cod catch and cod bycatch by each of the three gear groups will be counted against its allocation;

2. The Secretary, after consultation with the Council, is authorized to seasonally apportion the amount of the Pacific cod TAC allocated to vessels using hook-and-line or pot gear. Seasonal apportionments will be divided among three seasons of 4 months duration each, and will be established through the annual September-December specifications process (Sec. 675.20(a)). Any seasonal apportionments of the amount of Pacific cod TAC allocated to vessels using hook-and-line or pot gear must be based on the following information: (A) Seasonal distribution of prohibited species; (B) seasonal distribution of Pacific cod relative to prohibited species distribution; (C) expected variations in Pacific halibut bycatch rates throughout the fishing year; and (D) economic effects of any seasonal apportionment of Pacific cod on the hook-and-line and pot gear fisheries.

3. The Director, Alaska Region, NMFS (Regional Director) is authorized to reallocate Pacific cod from vessels using trawl gear to vessels using hook-and-line or pot gear, and vice versa, anytime during the year the Regional Director determines that one gear group or the other will not be able to harvest its allocation of Pacific cod. That portion of the jig gear allocation that is expected to go unharvested may be transferred to vessels using trawl and hook-and-line or pot gear at the beginning of the third 4-month season.

The intent of the measures implemented under Amendment 24 is to provide stability in the trawl gear and fixed gear (jig, hook-and-line and pot) fisheries by establishing designated allocations of the Pacific cod TAC among vessels using these different gear types. Further explanation of, and reasons for, these measures are contained in the preamble to the proposed rule (58 FR 57803, October 27, 1993).

1994 Specifications of the Pacific cod TAC

The Council recommended proposed 1994 gear allocations and seasonal apportionments of the amount of Pacific cod allocated to vessels using hook-and-line or pot gear at its September 1993 meeting. The proposed specifications for the 1994 Pacific cod fishery were published in the Federal Register for public review and comment as part of the proposed rule implementing Amendment 24 (58 FR 57803, October 27, 1993). At its December 1993 meeting, the Council reaffirmed its September recommendations. NMFS concurs with the Council's recommendations and has included the final specifications for the 1994 Pacific cod fisheries in this action implementing Amendment 24 (Tables 1 and 2).

Consistent with regulations authorizing seasonal apportionments of the amount of Pacific cod allocated to vessels using hook-and-line or pot gear (Sec. 675.20(a)(2)(v)), a discussion of the seasonal apportionments relative to the seasonal distribution of Pacific cod and prohibited species, prohibited species bycatch rates, and economic effects on the hook-and-line and pot gear fisheries is presented in the preamble to the proposed rule implementing Amendment 24 (58 FR 57803, October 27, 1993). In 1994, 1995, and 1996, the proposed and final specifications for Pacific cod will be established through the annual TAC specification process undertaken by NMFS and the Council during the September and December Council meetings each year (Secs. 675.20(a)(2) and 675.21(b)(3)).

Table 1.--1994 Gear Shares of the BSAI Pacific Cod Initial TAC

Gear	Percent	
	of initial TAC	Share of initial TAC (mt)
Jig.....	2.0	3,247
Hook-and-line or pot gear.....	44.0	71,434
trawl gear.....	54.0	87,669
Total.....	100.0	162,350

Table 2.--Final 1994 Seasonal Apportionment of the Amount of Pacific Cod Allocated to Vessels Using Hook-and-Line or Pot Gear

Season	Percentage of Pacific cod	Amount of Pacific cod (mt)
Jan. 01-Apr. 30.....	90	64,291
May 01-Aug. 31.....	10	7,143
Sep. 01-Dec. 31.....	Remainder	Remainder

Response to Comments

Five letters of comments were received within the comment period that ended December 6, 1993. Four of the letters were supportive of Amendment 24 and one letter opposed it. A summary of comments and NMFS's response follow.

Comment 1. The rule implementing Amendment 24 should include a prohibition against using both trawl and fixed gear onboard a vessel to fish for groundfish during a year to prevent vessels that use one gear type from gaining access to another gear type's Pacific cod allocation.

Response. Limitations on the use of trawl or fixed gear to fish for Pacific cod or other groundfish species are beyond the scope of Amendment 24 as adopted by the Council and approved by the Secretary. Prohibitions against using more than one gear type to fish for Pacific cod during a year would require a separate amendment to the FMP and cannot be implemented at this time.

Comment 2. The proposed 1994 seasonal apportionment of the amount of Pacific cod allocated to vessels using hook-and-line or pot gear is supported.

Response. NMFS is implementing the seasonal apportionment of the amount of Pacific cod TAC that is allocated to vessels using hook-and-line or pot gear as proposed.

Comment 3. The regulations implementing Amendment 24 provide an equitable way to manage the Pacific cod fishery to reduce waste, periods of high bycatch, and gear conflicts. Allocation of Pacific cod among gear types is an important management measure during the period the Council is developing a comprehensive plan to manage the groundfish fisheries. The implementation of the amendment should proceed without delay.

Response. NMFS concurs. Amendment 24 has been approved and implementing regulations are issued under the schedule set forth under section 305(a) of the Magnuson Act.

Comment 4. Preferential allocation of Pacific cod or other groundfish species to the newly emergent longline freezer fleet in the BSAI is opposed. The Bering Sea cod fishery was developed by the trawl fleet and criteria historically applied by the Council in resource allocation issues would favor the BSAI trawl fleet in any cod allocation dispute with longline vessels. Although the trawl industry generally believes that a 60-40 split of the Pacific cod TAC between trawl and fixed gear would more closely reflect current utilization levels, the fixed gear allocation implemented under Amendment 24 will provide benefits from the stabilization of the trawl and fixed gear fisheries for Pacific cod. Such stabilization will allow for better and more efficient planning and will enable the trawl and fixed gear fleets to assure their respective markets of a dependable and predictable supply of product.

Response. NMFS recognizes that the development of Amendment 24 and alternatives for allocating Pacific cod TAC among different gear groups was a contentious issue that required significant input and effort by the industry to help resolve problems addressed by the Council. NMFS concurs that the fixed allocation of the Pacific cod TAC among gear groups will provide stability to the Pacific cod fisheries during the period the Council is developing a long-term comprehensive plan for the management of the Alaska groundfish resources.

Comment 5. The annual apportionment of the halibut bycatch limit established for BSAI fisheries and seasons should support the annual seasonal apportionment of Pacific cod.

Response. Regulations implementing Amendment 24 do not govern how Pacific halibut bycatch limits are apportioned among fisheries, although gear specific allocations of Pacific cod will be considered when apportioning prohibited species bycatch limits among fisheries and seasons during the annual specification process (Sec. 675.21(b)(3)). As required by regulations at Sec. 675.21(b)(3), NMFS will review the seasonal apportionment of the amount of Pacific halibut bycatch mortality specified for the Pacific cod fisheries when the agency makes a final determination on the 1994 groundfish specifications.

Comment 6. The trawl industry generally supports Amendment 24 as a management measure that will support the stabilization of the Pacific cod fisheries provided that the annual process for apportioning the Pacific halibut trawl bycatch mortality limit among trawl fisheries is not used to undermine the intent of this amendment. Efforts by representatives for the fixed gear fisheries to restrict the amount of halibut annually apportioned to the Pacific cod trawl fishery would prevent the trawl gear allocation of Pacific cod from being harvested and result in a de facto preferential allocation of cod to the fixed gear fleet. The Council and NMFS must ensure that the annual process for the apportionment of PSC limits among trawl fisheries does not lead to the instability that Amendment 24 is intended to avoid.

Response. NMFS acknowledges that significant flexibility exists on how PSC limits are annually apportioned among fisheries and seasons. The resulting apportionments must be justified based on regulatory intent to optimize the harvest of available groundfish under a given PSC limit (Sec. 675.21 (b)(1) and (b)(3)). NMFS believes that the annual prohibited species bycatch allowances specified for the Pacific cod trawl fishery should be based on anticipated prohibited species bycatch needs. NMFS has advised the Council that it should consider PSC limit apportionments among fisheries and seasons that are consistent with regulations implementing Amendment 24. Nonetheless, the PSC limits established for the BSAI trawl fisheries likely will continue

to constrain the ability of trawl fisheries to harvest available groundfish.

Comment 7. Amendment 24, as adopted by the Council, did not establish a fixed allocation of the BSAI trawl halibut bycatch limit to the Pacific cod trawl fishery and the proposed rule did not rectify this omission. This measure is necessary for reasons stated in Comment 6. The anticipated benefits under Amendment 24 in terms of fishery stability will not be realized as long as the possibility exists for fixed gear interests to continue to use the annual specification process to constrain the amount of halibut bycatch apportioned to the Pacific cod trawl fishery, thereby achieving a de facto preferential allocation to the fixed gear fleet.

Response. A separate amendment to the FMP would be needed to establish a fixed allocation of the trawl halibut PSC limit to the BSAI Pacific cod trawl fishery. This measure could not be implemented as a regulatory amendment and included in the proposed rule to implement Amendment 24. The response to Comment 6 further describes NMFS's position on this issue. The Council may address this issue in the future.

Comment 8. Pacific cod catch during the duration of Amendment 24 should not be considered in calculating quota shares under any individual transferrable quota (ITQ) program the Council may adopt in the future because gear allocations of Pacific cod under Amendment 24 may alter catch patterns or otherwise skew the proportion of Pacific cod harvested by any gear type.

Response. ITQs are not the subject of this rulemaking. The Council and the Secretary have not determined whether access to the fishery will be controlled, or if a limited access system will be implemented. Once such determinations are made, eligibility criteria for participation in the fishery will be determined.

Classification

NMFS prepared a final regulatory flexibility analysis (FRFA), which concludes that this rule could have a significant economic impact on a substantial number of small entities. A copy of this analysis is available from the Council (see ADDRESSES).

List of Subjects in 50 CFR part 675
Fisheries, Reporting and recordkeeping.

Dated: January 24, 1994.

Nancy Foster, Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 675 is amended as follows:

PART 675--GROUND FISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

1. The authority citation for 50 CFR part 675 continues to read as follows:

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

2. In Sec. 675.20, paragraphs (a)(2)(iv), (a)(2)(v), and (a)(3)(iv) are added to read as follows:

Sec. 675.20 General limitations.

(a) * * *

(2) * * *

(iv) Applicable through December 31, 1996.

(A) The TAC of Pacific cod, after subtraction of reserves, will be allocated 2 percent to vessels using jig gear, 44 percent to vessels using hook-and-line or pot gear, and 54 percent to vessels using trawl gear. The

Regional Director may establish separate directed fishing allowances and prohibitions authorized under paragraphs (a)(8) and (a)(9) of this section for vessels harvesting Pacific cod using jig gear, hook-and-line or pot gear, or trawl gear.

(B) 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 allocated to those vessels under paragraph (a)(2)(iv) of this section, then NMFS may reallocate the projected unused amount of Pacific cod to vessels harvesting Pacific cod using the other gear type(s) through publication in the Federal Register.

(C) On or about September 1 of each year, the Regional Director will reallocate 45 percent of any unused amount of Pacific cod allocated to vessels using jig gear to vessels using hook-and-line or pot gear and 55 percent of any unused amount of Pacific cod allocated to vessels using jig gear to vessels using trawl gear through publication in the Federal Register.

(v) Applicable through December 31, 1996. In the publications of proposed and final harvest limit specifications required under Sec. 675.20(a) of this part, the Secretary, after consultation with the Council, may seasonally apportion the amount of Pacific cod TAC allocated to vessels using hook-and-line or pot gear under paragraph (a)(2)(iv) of this section among the following three periods: January 1 through April 30; May 1 through August 31; and September 1 through December 31. The Secretary will base any seasonal apportionment of the Pacific cod allocation for vessels using hook-and-line or pot gear on the following information:

(A) Seasonal distribution of Pacific cod relative to prohibited species distribution;

(B) Expected variations in prohibited species bycatch rates experienced in the Pacific cod fisheries throughout the fishing year; and

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

(3) * * *

(iv) Applicable through December 31, 1996. Any amounts of the nonspecific reserve that are apportioned to Pacific cod as provided by paragraph (b) of this section must be apportioned between vessels using jig, hook-and-line or pot, and trawl gear in the same proportion specified in paragraph (a)(2)(iv)(A) of this section, unless the Regional Director determines under paragraph (a)(2)(iv)(B) of this section or paragraph (a)(2)(iv)(C) of this section that vessels using a certain gear type will not be able to harvest the additional amount of Pacific cod. In this case, the nonspecific reserve will be apportioned to vessels using the other gear type(s).

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