

and none would be significantly affected by this rule. The proposed rule's requirements that a vessel submit to dockside safety inspections and display a decal or certificate demonstrating compliance with U.S. Coast Guard (USCG) safety regulations merely provide evidence that the vessel is in compliance with existing mandatory USCG safety regulations. The safety inspection would be performed at the dock at no cost to the vessel owner and would take approximately 4 hours. The vessel owner/operator would be able to schedule the inspection at a time that is convenient for the owner/operator, such as when the vessel is at dock. Thus, this rule is not expected to result in any economic loss associated with lost days at sea or any other significant economic impacts on a substantial number of small entities.

This action has been determined to be not significant for purposes of E.O. 12866.

**List of Subjects in 50 CFR Part 600**

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: September 15, 1997.

**David L. Evans,**

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

For the reasons set forth in the preamble, 50 CFR part 600 is proposed to be amended as follows:

**PART 600—MAGNUSON-STEVENS ACT PROVISIONS**

1. The authority citation for 50 CFR part 600 continues to read as follows:

**Authority:** 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. Section 600.725 is amended by redesignating (p) as (t), adding new paragraphs (p), (q), (r), (s), and (u) and revising newly redesignated paragraph (t) to read as follows:

**§ 600.725 General prohibitions.**

\* \* \* \* \*

(p) Fail to submit to a USCG safety inspection when required by NMFS pursuant to § 600.746.

(q) Fail to display a Commercial Fishing Vessel Safety decal or a valid certificate of compliance or inspection pursuant to § 600.746.

(r) Fail to provide to an observer, a NMFS employee, or a designated observer provider information that has been requested pursuant to § 600.746, or fail to allow an observer, a NMFS employee, or a designated observer provider to inspect any item described at § 600.746.

(s) To fish without an observer when the vessel is required to carry an observer.

(t) Assault, resist, oppose, impede, intimidate, or interfere with a NMFS-approved observer aboard a vessel.

(u) Prohibit or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer from conducting his or her duties aboard a vessel.

3. In subpart H, § 600.746 is added to read as follows:

**§ 600.746 Observers.**

(a) *Applicability.* This section applies to any fishing vessel required to carry an observer as part of a mandatory observer program or carrying an observer as part of a voluntary observer program under the Magnuson-Stevens Act, MMPA (16 U.S.C. 1361 *et seq.*), the ATCA (16 U.S.C. 971 *et seq.*), the South Pacific Tuna Act of 1988 (SPTA; 16 U.S.C. 973 *et seq.*), or any other U.S. law.

(b) *Observer requirement.* An observer is not required to board, or stay aboard, a vessel that is unsafe or inadequate as described in paragraph (c).

(c) *Inadequate or unsafe vessels.* (1) A vessel is inadequate or unsafe for purposes of carrying an observer and allowing operation of normal observer functions if it does not comply with the applicable regulations regarding observer accommodations (see 50 CFR parts 229, 285, 300, 600, 622, 648, 660, 678, and 679) or if it has not passed a USCG safety inspection. A vessel that has passed a USCG safety inspection must display one of the following:

(i) A current Commercial Fishing Vessel Safety Decal, issued within the last 2 years, that certifies compliance with regulations found in 33 CFR Chapter I and 46 CFR Chapter I;

(ii) A certificate of compliance issued pursuant to 46 CFR 28.710; or

(iii) A valid certificate of inspection pursuant to 46 U.S.C. 3311.

(2) Upon request by an observer, a NMFS employee, or a designated observer provider, a vessel owner/operator must provide correct information concerning any item relating to any safety or accommodation requirement prescribed by law or regulation. A vessel owner or operator must also allow an observer, a NMFS employee, or a designated observer provider to visually inspect any such item.

(d) *Corrective measures.* If a vessel is inadequate or unsafe for purposes of carrying an observer and allowing operation of normal observer functions, NMFS may require the vessel owner or operator either to:

(1) Submit to and pass a USCG safety inspection; or

(2) Correct the deficiency that is rendering the vessel inadequate or unsafe (e.g., if the vessel is missing one personal flotation device (PFD), the owner or operator could be required to obtain an additional one), before that vessel is authorized to fish in fisheries with mandatory observer coverage requirements.

(e) *Timing.* The requirements of this section apply both at the time of the observer's boarding, at all times the observer is aboard, and at the time the observer is disembarking from the vessel.

(f) *Effect of inadequate or unsafe status.* A vessel that would otherwise be required to carry an observer but is inadequate or unsafe for purposes of carrying an observer and allowing operation of normal observer functions is prohibited from fishing without observer coverage unless NMFS waives the observer requirement.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 970829212-7212-01; I.D. 080597F]

RIN 0648-AK14

**Fisheries of the Exclusive Economic Zone Off Alaska; Allocation of Atka Mackerel to Vessels Using Jig Gear**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Amendment 34 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). Amendment 34 would authorize an allocation of Atka mackerel to vessels using jig gear. Annually, up to 2 percent of the total allowable catch (TAC) specified for this species in the eastern Aleutian Islands District (AI)/Bering Sea subarea (BS) could be allocated to the jig gear fleet fishing in this area. This action is necessary to provide an opportunity to a localized, small-vessel jig gear fleet to fish for Atka mackerel in summer months. The large-scale trawl fisheries typically harvest the

available TAC for this species early in the fishing year, which does not allow jig gear fishermen an opportunity for a summer fishery. This action is intended to further the goals and objectives of the FMP.

**DATES:** Comments on the proposed rule must be received at the following address by November 6, 1997.

**ADDRESSES:** Comments must be sent to Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the proposed FMP amendment and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for Amendment 34 are available from NMFS at the above address, or by calling the Alaska Region, NMFS at 907-586-7228.

**FOR FURTHER INFORMATION CONTACT:** Susan Salvesson, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) are managed by NMFS under the FMP. The FMP was prepared by the Council under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the groundfish fisheries of the BSAI appear at 50 CFR parts 600 and 679.

The Council has submitted Amendment 34 for Secretarial review and a Notice of Availability (NOA) of the FMP amendment was published on August 15, 1997 (62 FR 43689) with comments on the FMP amendment invited through October 14, 1997. Comments on this proposed rule are invited and must be received on or before November 6, 1997. All written comments received by October 14, 1997, whether specifically directed to the FMP amendment, the proposed rule, or both, will be considered in the approval/disapproval decision on the FMP amendment.

#### **Management Background and Need for Action**

At its December 1996 meeting, the Council reviewed proposals received from management agencies, the fishing industry, conservation groups, and other interested members of the public for changes to the FMP or regulations implementing the FMP. One proposal received from the Unalaska Native Fishermen's Association requested that 2 percent of the TAC annually specified for Bering Sea Atka mackerel be allocated to vessels using jig gear. The

purpose of this proposal was to provide more opportunity to a local small-vessel jig gear fleet to fish for Atka mackerel in late spring and summer months without direct competition from the large, high-capacity trawl fleet that typically harvests the Eastern AI/BS Atka mackerel TAC early in the fishing year.

Under the existing FMP, a closure to directed fishing for Atka mackerel applies to all vessels. Thus, vessels using jig gear are prevented from directed fishing for Atka mackerel once an applicable directed fishing closure is effective, although bycatch amounts of Atka mackerel may be retained during a fishing trip equal to 20 percent of the retained amount of other species open to directed fishing. Atka mackerel may not be retained on board a vessel once Atka mackerel becomes a prohibited species upon attainment of the TAC or because of overfishing concerns for other species taken as bycatch in the Atka mackerel fishery.

Jig gear harvests of Atka mackerel have been constrained to late spring and summer months in the BS near the port of Dutch Harbor, because of the physical limitations of the small boat fleet. In 1997, the directed fishery for Atka mackerel in the Eastern AI/BS was closed February 4. Atka mackerel became a prohibited species on February 28 when the fast-paced trawl fisheries harvested the TAC. As a result, the jig gear fleet will not have an opportunity to fish for this species in 1997.

Based on Alaska Department of Fish and Game (ADF&G) fish tickets, 15 and 19 vessels using jig gear in the BS harvested 36 and 13 metric tons (mt) of Atka mackerel in 1994 and 1995, respectively. These amounts equate to 0.22 percent and 0.09 percent of the Atka mackerel harvest in the Eastern AI/BS during these 2 years. The ADF&G fish ticket database does not contain records of Atka mackerel harvests by vessels using jig gear in 1996, and jig gear fishermen assert that they did harvest Atka mackerel in 1996. Most Atka mackerel is harvested by the jig gear fleet for use as bait and the catch of fish for personal-use bait is not required to be reported on ADF&G fish tickets. Furthermore, Atka mackerel was not a prohibited species in the Eastern AI/BS during 1996 until August 8, thus providing the jig gear fleet some opportunity for retaining Atka mackerel taken as bycatch in other fisheries. Vessels using jig gear have not fished in the Central or Western AI districts, which is not surprising considering that most vessels using this gear type are less

than 60 ft (18.3 m) length overall and fish out of Dutch Harbor.

Information from jig gear fishermen indicate that most of the Atka mackerel harvested by the jig gear fleet is used as bait in the jig gear fishery for Pacific cod, although jig gear fishermen testified to the Council that they would like to develop a fresh fish market for this species. Alternative sources of bait for the Pacific cod jig gear fleet exist, but they can be relatively expensive: for example, bait costs can approach \$.50/lb for frozen herring shipped from the East Coast of the United States. Available catch data also indicate that the harvest of Atka mackerel by vessels using jig gear has been restricted to the southern BS in Federal reporting areas 519 and 518. Conversely, most of the trawl harvest in the Eastern AI/BS occurred in reporting area 541 (Eastern AI).

Vessels using trawl gear harvest over 99 percent of the available Atka mackerel. Most of the retained catch is processed into a headed and gutted product, although surimi production has more than doubled between 1996 and 1997. As a result, the competition within the trawl fleet for access to the Atka mackerel resource is increasing, further aggravating the fast-paced nature of this fishery and the rate at which TAC is reached.

The Council adopted Amendment 34 to the FMP at its June 1997 meeting in response to concerns about the fast-paced nature of the Atka mackerel trawl fishery and the resulting preemption of the small-scale jig gear fishery. The Council's action would authorize an allocation of up to 2 percent of the Atka mackerel TAC specified for the Eastern AI/BS to vessels using jig gear. The Council also voted to annually specify the jig gear allocation during the annual groundfish specifications process based on recent and anticipated harvest capacity. This action was taken in consideration of the small amount of Atka mackerel annually harvested in recent years and to respond to trawl industry concerns about allocating more Atka mackerel to the jig gear fleet than could be harvested. Pending the approval of Amendment 34 by NMFS, the Council indicated its intent to propose a 1-percent allocation of Eastern AI/BS Atka mackerel TAC to vessels using jig gear in 1998.

At this time, neither Federal nor Alaska State reporting systems require catcher vessel operators to report the amount of groundfish harvested for personal use bait. Existing regulations, however, do require that any Atka mackerel landed shoreside for commercial sale or barter be reported on

ADF&G fish tickets, as well as on NMFS weekly production reports submitted by groundfish processors. The current inability to accurately monitor the harvest amount of Atka mackerel used for bait does not pose a management concern at this time. The amount of Atka mackerel harvested for personal use bait in the Pacific cod jig gear fishery is assumed to be very small considering that the total 1996 jig gear harvest of Pacific cod was only about 270 mt. The personal use bait fishery for Atka mackerel, therefore, would easily be accommodated within the jig gear allocation intended by the Council for 1998, or 1 percent of the Eastern AI/BS TAC. This amount equals 150 mt based on the current 1997 TAC amount. Management agencies will need to consider changes to existing reporting programs to more accurately account for the Atka mackerel bait fishery if the total jig gear harvest of this species begins to approach the allocated level due to the development of a fresh fish market and/or an increased harvest of Atka mackerel for personal use bait.

#### Classification

At this time, NMFS has not determined that Amendment 34 is consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

An RIR was prepared for this proposed rule that describes the management background, the purpose and need for action, the management action alternatives, and the social impacts of the alternatives. The RIR also estimates the total number of small entities affected by this action and analyzes the economic impact on those small entities.

An IRFA was prepared as part of the RIR, which describes the impact this proposed rule would have on small entities, if adopted. The analysis examined the economic effects of this proposed rule and made the following conclusions: Under the status quo alternative, annual closures of the Eastern AI/BS to directed fishing for Atka mackerel, the area most accessible to the small boat fleet currently using jig gear, likely will continue to occur by early to mid February. Thus any opportunity for the small boat jig fleet to fish for Atka mackerel when weather and sea conditions are more favorable is foregone, and opportunity is lost for these vessels to harvest Atka mackerel for bait or to develop a fresh fish market. Jig gear fishermen who rely on Atka

mackerel for use as bait in the Pacific cod fishery would need to pursue other bait alternatives, including the current practice of purchasing bait at \$.50/lb that is shipped from the East Coast of the United States.

Under the proposed action, the potential total revenue to vessels using jig gear could range from \$52,000 to \$104,000 annually, depending on the percentage of TAC allocated to the jig gear fleet and assuming that all Atka mackerel caught are retained and delivered shoreside. These results are intended to show a relative potential for revenue. In reality, these results tend to overstate the potential gains to these vessel operators because of physical limitations in their ability to actually harvest the amount of Atka mackerel allocated to them and the assumption that all Atka mackerel harvested would be retained.

Similarly, the potential loss to vessels using trawl gear in at-sea processing operations (\$90,000–\$180,000) is likely overstated to the extent that a portion of the Atka mackerel harvested is not retained or to the extent that Atka mackerel TACs or TAC allocations are not fully harvested during a year. Regulatory provisions that would allow incremental allocations to the jig gear fleet upon demonstrated harvest capacity may reduce potential losses to the trawl fleet that could result from an allocation of Atka mackerel to jig gear vessels. No change to the harvest of Atka mackerel by vessels using pot or hook-and-line gear is assumed, because this species is harvested only as bycatch and typically is not retained.

Significant positive impacts on the jig gear fleet could occur under the proposed action to the extent that the jig gear fleet realized potential gains through increased harvests of Atka mackerel. The potential economic benefit to the 19 catcher vessels using jig gear to harvest Atka mackerel in 1995 (small entities) could exceed 5 percent of existing gross annual revenues currently experienced by this fleet. Although quantitative data are not available to assess whether a significant positive economic impact would occur, a 5-percent gain in total annual revenues is not unreasonable under the proposed action.

The Regulatory Flexibility Act requires that the IRFA contain a description of any significant alternatives that would minimize any significant economic impact. Maintaining the status quo would have minimized the impact. However, since the impact is positive, the status quo alternative was not desirable.

Any loss in gross annual revenues that would be incurred by trawl catcher vessels under the proposed action would likely not be significant (exceed 5 percent of a vessel's total annual revenue), because these vessels are larger (> 60 ft (18.29 m) in length) and participate in other lucrative groundfish fisheries, including the Atka mackerel fishery in the Central and Western Aleutians. Potential economic impacts to trawl vessels under the proposed action could be minimized to the extent that the authority to allocate Atka mackerel to vessels using jig gear includes a step-up provision tailored to anticipated jig gear harvest capacity. Impact on the trawl fleet would be minimized further given that such allocation is restricted to the Eastern AI/BS. A copy of the RIR/IRFA is available from NMFS (see ADDRESSES).

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

#### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: September 15, 1997.

David L. Evans,

Deputy 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 50 CFR part 679 continues to read as follows:

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

2. In § 679.20, paragraph (a)(8) is redesignated as paragraph (a)(9) and new paragraphs (a)(8) and (c)(6) are added to read as follows:

#### § 679.20 General limitations.

\* \* \* \* \*

(a) \* \* \*

(8) *BSAI Atka mackerel.*—(i) *TAC by gear.* Vessels using jig gear will be allocated up to 2 percent of the TAC of Atka mackerel specified for the Eastern Aleutian Islands District and Bering Sea subarea, after subtraction of reserves, based on the criteria specified at paragraph (a)(8)(ii) of this section. The remainder of the TAC, after subtraction of reserves, will be allocated to vessels using other authorized gear types.

(ii) *Annual specification.* The percentage of the Atka mackerel TAC specified for the Eastern Aleutian

Islands District and Bering Sea subarea that is allocated annually to vessels using jig gear will be published in the **Federal Register** as part of the proposed and final annual specifications under paragraph (c) of this section. The jig gear allocation will be based on the following criteria:

(A) The amount of Atka mackerel harvested by vessels using jig gear during recent fishing years;

(B) The anticipated harvest of Atka mackerel by vessels using jig gear during the upcoming fishing year; and

(C) The extent to which the jig gear allocation will support the development of a jig gear fishery for Atka mackerel while minimizing the amount of Atka mackerel TAC annually allocated to vessels using jig gear that remains unharvested at the end of the fishing year.

\* \* \* \* \*

(c) \* \* \*

(6) *BSAI Atka mackerel allocations.*  
The proposed, interim, and final specifications will specify the allocation of BSAI Atka mackerel among gear types as authorized under paragraph (a)(8) of this section.

\* \* \* \* \*

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