

disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment, immediately publish a notice in the **Federal Register** that the amendment is available for public review and comment. NMFS will consider the public comments received during the comment period described above in determining whether to approve the amendment for implementation.

The SFA amended the requirements for FMPs in section 303(a) of the Magnuson-Stevens Act. The SFA established a 2-year deadline (October 11, 1998) by which each Regional Fishery Management Council had to submit amendments to NMFS to bring all the FMPs into compliance with the SFA/Magnuson-Stevens Act requirements.

Amendment 11 seeks to make the Pacific Coast Groundfish FMP consistent with the Magnuson-Stevens Act by: amending the FMP framework that defines "optimum yield" for setting annual groundfish harvest limits; setting framework control rules on defining rates of "overfishing" and levels at which managed stocks are considered "overfished;" defining Pacific Coast groundfish essential fish habitat; setting a bycatch management objective and a framework for bycatch reduction measures; establishing a management objective to take the importance of fisheries to fishing communities into account when setting groundfish management measures; providing authority within the FMP for the Council to require groundfish use permits for all groundfish users; authorizing the use of fish for compensation for private vessels conducting NMFS-approved research; removing jack mackerel from the fishery management unit; and updating FMP objectives, definitions and industry descriptions.

Public comments on Amendment 11 must be received by February 1, 1999 to be considered by NMFS in the decision to approve/disapprove Amendment 11. A proposed rule to implement Amendment 11 has been submitted for Secretarial review and approval. NMFS expects to publish and request public comment on proposed regulations to implement Amendment 11 in the near future.

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

Dated: November 25, 1998.

**Gary C. Matlock,**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[I.D. 111798A]

RIN 0648-AL89

### Fisheries of the Exclusive Economic Zone Off Alaska; Revision of Definitions of Overfishing, Maximum Sustainable Yield, and Optimum Yield for the Crab and Scallop Fisheries

**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 for Secretarial review Amendment 7 to the Fishery Management Plan (FMP) for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands (BSAI crab FMP) and Amendment 6 to the FMP for the Scallop Fishery Off Alaska. These amendments would revise definitions of overfishing, maximum sustainable yield (MSY), and optimum yield (OY) for the crab and scallop fisheries. These actions are necessary to ensure that conservation and management measures continue to be based on the best scientific information available and are intended to advance the Council's ability to achieve, on a continuing basis, the OY from fisheries under its jurisdiction.

**DATES:** Comments on the amendments must be received by February 1, 1999.

**ADDRESSES:** Comments on these amendments should be submitted to Sue Salvesson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th. Street, Juneau, AK. Copies of Amendment 7 to the BSAI Crab FMP, Amendment 6 to the Scallop FMP, and the Environmental Assessment prepared for each amendment are available from the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501-2252; telephone 907-271-2809.

**FOR FURTHER INFORMATION CONTACT:** Gretchen Harrington, 907-586-7228 or gretchen.harrington@noaa.gov.

**SUPPLEMENTARY INFORMATION:**

## Background

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit each FMP or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or FMP amendment, immediately publish a document announcing that the FMP or FMP amendment is available for public review and comment. This action constitutes such notice for Amendment 7 to the FMP for the Bering Sea/Aleutian Islands King and Tanner Crabs and Amendment 6 to the FMP for the Scallop Fishery Off Alaska. NMFS will consider the public comments received during the comment period in determining whether to approve these FMP amendments.

Section 301 (a) of the Magnuson-Stevens Act establishes national standards for fishery conservation and management, and requires that all FMPs create management measures consistent with those standards. National standard 1 requires that conservation and management measures shall "prevent overfishing while achieving, on a continuing basis, the optimum yield" from fisheries in Federal waters. The Magnuson-Stevens Act, in section 303(a)(10), requires that each FMP specify objective and measurable criteria (status determination criteria) for identifying when stocks or stock complexes covered by the FMP are overfished and for rebuilding overfished stocks. Pursuant to section 301(b) of the Magnuson-Stevens Act, NMFS issued national standard guidelines (50 CFR 600.305) to provide comprehensive guidance for the development of FMPs and FMP amendments that comply with the national standards. The national standard guidelines require that when data are insufficient to estimate any of the determination criteria, the use of reasonable proxies is required.

The guidelines for national standard 1 (50 CFR 600.310) are based on the Magnuson-Stevens Act's definitions of "optimum yield," "overfishing," and "overfished"; the requirement for the establishment of objective and measurable criteria for determining the status of a stock or stock complex; and the requirement for remedial action in the event that overfishing is occurring or that a stock or stock complex is overfished.

The guidelines identify the following components as objective and measurable criteria for determining the

status of the stock or stock complex to be defined in the FMP. First, MSY is established for the stock or stock complex. MSY is the largest long-term average catch or yield that can be taken from a stock or stock complex under prevailing ecological and environmental conditions. To achieve a long-term average catch approximating MSY, an MSY control rule is determined. The MSY control rule can be a harvest rate equal to a conservative estimate of natural mortality. The MSY stock size is then determined as the average size of the stock that would be achieved under the MSY control rule. MSY stock size is measured in terms of mature biomass, or a proxy thereof. MSY stock size is the minimum standard for a rebuilding target when a stock is considered overfished.

MSY, the MSY control rule, and MSY stock size are then used to determine the minimum stock size threshold (MSST) and maximum fishing mortality threshold (MFMT), which are used to determine whether a stock or stock complex is overfished. The MSST is the greater of one half the MSY stock size, or the minimum stock size at which rebuilding to the MSY level would be expected to occur within 10 years if the stock or stock complex were exploited at the MFMT. If the actual size of the stock in a given year falls below MSST, the stock is considered "overfished." MFMT is defined by the MSY control rule and is expressed as the MSY fishing mortality rate,  $F_{msy} = M$ , a conservative estimate of the natural mortality value. Exceeding the MFMT for a period of 1 year or more constitutes overfishing.

The OY from a fishery provides a target harvest level and provides for rebuilding overfished stocks to a level consistent with producing MSY. OY equals the amount of fish that will provide the greatest overall benefit to the Nation. OY is based on MSY as reduced by relevant social, economic, and ecological factors. OY is calculated to determine the optimum harvest level over the long term. In the case of an overfished fishery, OY provides for rebuilding to a level consistent with producing the MSY for the fishery.

NMFS is required to notify the Council once NMFS determines that overfishing is occurring, a stock or stock complex is overfished, a stock or stock complex is approaching its MSST, or the rate or level of fishing mortality for a stock or stock complex is approaching MFMT. The Council then must take action to develop a rebuilding plan within 1 year. The Council may implement interim measures to reduce overfishing until the rebuilding plan is in place. The rebuilding plan can either

be an FMP, an FMP amendment, or a proposed rule that accomplishes the purposes outlined in the national standard guidelines to end overfishing and rebuild the overfished stock or stock complex. Furthermore, the Council action must specify a time period for rebuilding the stock or stock complex that satisfies the Magnuson-Stevens Act.

In April 1998, the Council and its Advisory Panel (AP) and Scientific and Statistical Committee (SSC) reviewed a draft analysis of alternatives for revising the existing overfishing definitions. On May 1, 1998, NMFS published revised advisory guidelines to assist regional fishery management councils in updating FMPs for consistency with the Magnuson-Stevens Act. In June 1998, the Council took final action on amendments to bring the BSAI crab and scallop FMPs into compliance with the Magnuson-Stevens Act and the national standard guidelines (50 CFR 600.310). Each of these proposed amendments, if approved, would redefine overfishing, MSY, and OY based on the biology of the stock, the fishing history, and the quality of available data.

#### **Bering Sea/Aleutian Islands King and Tanner Crabs**

NMFS manages the king and Tanner crab fisheries in the Exclusive Economic Zone (EEZ) (3 to 200 miles offshore) of the Bering Sea and Aleutian Islands off Alaska under the BSAI crab FMP. The Council prepared this FMP pursuant to the Magnuson-Stevens Act. NMFS approved the FMP, and it became effective in 1989. It is a framework FMP that, with oversight from the Council and NMFS, defers management of the crab resources in the BSAI to the State of Alaska (State). The FMP contains three categories of management measures: (1) Specified Federal management measures that require an FMP amendment to change; (2) framework type management measures, with criteria set out in the FMP that the State must follow when implementing changes in State regulations; and (3) measures that are neither rigidly specified nor frameworked in the FMP and that may be freely adopted or modified by the State, subject to applicable Federal laws and review (explained in the BSAI crab FMP, available from the Council: see ADDRESSES).

Amendment 7 to the BSAI crab FMP would improve management of the BSAI crab fisheries by instituting conservation and management measures that would (1) prevent overfishing, (2) achieve OY on a continuing basis, and

(3) update the BSAI crab FMP with new information.

#### **Revised Definitions of OY, MSY, and Overfishing**

Amendment 7 would establish criteria for estimating OY and overfishing levels for BSAI crab stocks. The BSAI Crab Plan Team developed these criteria based on species life history characteristics and trends in stock biomass estimates. OY, MSY, and threshold levels proposed in Amendment 7 were derived from definitions contained in the Magnuson-Stevens Act and the national standard guidelines.

MSY represents the average of sustainable yield (SY) over a suitable period of time, where SY is a fraction of the total mature biomass (male and female) for a given year. The BSAI Crab Plan Team estimated MSY from the best scientific information available. However, the scientific information required to determine MSY was not available for several BSAI crab stocks. In these cases, proxy stocks have been used to estimate MSY. Table 1 of the Environmental Assessment for Amendment 7 sets forth estimates of MSY for BSAI crab species (see ADDRESSES). The MSY control rule for king and Tanner crabs is the mature biomass of a stock, or proxy thereof, exploited at a fishing mortality rate equal to a conservative estimate of natural mortality,  $M$ , which is  $M=0.2$  for all king crab species and  $M=0.3$  for all Tanner crab species. For BSAI crab, the MSY stock size is the average mature biomass observed over the past 15 years, from 1983 to 1997.

Amendment 7, in establishing the MSY, allows the establishment of the threshold level of abundance below which the stock is considered overfished. Overfishing is defined for king and Tanner crab stocks in the BSAI as any rate of fishing mortality in excess of the MFMT for a period of 1 year or more. MFMT, defined by the MSY control rule, is expressed as the MSY fishing mortality rate,  $F_{msy} = M$ . The MSST is specified as one-half of the MSY stock size. If stock abundance falls below MSST, the stock is considered overfished and the guidelines specify that a rebuilding plan must be prepared for the stock.

These definitions are part of the FMP framework. The Crab Plan Team and the Council will review the definitions every 5 years or when environmental conditions indicate a regime shift. At that time, MSY can be recalculated to take into account changes in the environment, in which case MSY, OY,

and MSST would be changed in the FMP.

The State determines the allowable catch for the commercial crab fisheries by annually setting guideline harvest levels (GHLs) based on estimates of stock abundance. Annual establishment of crab GHLs is a "category two" management measure, which means the State determines the GHLs following criteria established in the FMP and with Federal oversight. Because they are based on crab abundance, GHLs can be set higher than MSY and the upper range of OY for a given fishing season, as long as the MSY and OY are not exceeded on a continuing basis. Therefore, in a year when stock abundance is higher than the MSY stock size, the GHL can exceed OY and MSY, without constituting overfishing. For example, if the Bristol Bay red king crab stock continues to rebuild as projected, the stock may be abundant enough to warrant a GHL higher than the MSY. If that occurs, the fleet would still be allowed to harvest the GHL in that year.

Currently, the Bering Sea *C. bairdi* Tanner crab spawning biomass is below the MSST and, hence, would be deemed "overfished" under Amendment 7. Estimated spawning biomass of Tanner crabs from the 1997 survey was 64.2 million lb (29,121 metric tons (mt)), well below the MSST of 94.8 million lb (43,001 mt). If Amendment 7 is approved by NMFS, the Council will be required to develop a rebuilding plan for this stock within 1 year.

#### Update the BSAI Crab FMP

The BSAI Crab FMP has never been updated from the original draft of January 24, 1989. Since that time, six FMP amendments have been approved, but the amendment language has not been included in the FMP text. The 1989 BSAI Crab FMP does not provide readers with a clear understanding of conservation and management measures that have been implemented for the BSAI crab fisheries. In addition, the 1989 FMP does not include catch data and other scientific information from the past 10 years. Other changes have also occurred, including changes to the Magnuson-Stevens Act and other laws, a Russian/U.S. boundary agreement, and development of a Federal/State Action Plan.

For these reasons, the Crab Plan Team and the Council have proposed revisions to the FMP to bring it up to date. These proposed changes were discussed and reviewed over the course of several public meetings that occurred during the period 1995–1998. Proposed changes would include incorporating previously approved FMP amendment

language, updating figures, tables, and appendix language, editorial housekeeping changes, and adding language in accordance with requirements of the Magnuson-Stevens Act. New sections would be added to include an Executive Summary, a Federal/State Action Plan, the Alaska Board of Fisheries regulations on Category 2 petitions, Species Profiles, and Coastal Community Profiles.

#### Scallops

A Federal FMP for the scallop fishery was recommended by the Council in April 1995, and NMFS approved it on July 26, 1995. The FMP defers scallop management to the State because the State has managed the scallop fishery in the EEZ and in Alaskan State waters since the fishery began in 1968. The FMP covers all fisheries for weathervane scallops (*Patinopecten caurinus*), pink scallops (*Chlamys rubida*), spiny scallops (*Chlamys hastata*), rock scallops (*Crassadoma gigantea*), and all other scallop species in the waters off Alaska. Only weathervane scallops are harvested commercially at this time.

Amendment 6 is proposed to amend the scallop FMP by redefining overfishing, OY, and MSY, to bring the FMP into compliance with the Magnuson-Stevens Act. This amendment also would add information on State bycatch monitoring and reduction programs.

The Scallop Plan Team recommended definitions of MSY, OY, and overfishing for weathervane scallop stocks based on life history data and observed catch history. For the weathervane scallop stocks, biomass has not been estimated, age data from the fishery are lacking, and no comprehensive surveys have been conducted. Therefore, MSY can not be estimated based on scallop biomass.

MSY for weathervane scallops is based on the average catch from 1990–1997, excluding 1995, when the fishery was closed due to overfishing concerns. The 1990–1997 time frame reflects prevailing ecological conditions. OY is specified as a range extending from zero to MSY. The MSY control rule for weathervane scallops consists of a constant harvest rate equal to the estimated natural mortality rate of 0.13. MSY stock size is MSY divided by natural mortality. A MSST for weathervane scallops is established based on  $\frac{1}{2}$  MSY stock size. If the stock fell below this threshold, the stock would be considered overfished. Overfishing of weathervane scallop stocks is then defined as a fishing rate in excess of the natural mortality rate,  $F_{\text{overfishing}}=M=0.13$ . It should be noted

that the current upper ends of the GHL ranges for each scallop management area, when combined, exceed the upper bound of OY.

In the future, better quantitative estimates of appropriate scallop yields by area may be generated based on analysis of observer data. Additional information on biomass and long-term potential yield of pink, spiny, and rock scallops also may be available in the future. At such time, MSY and OY would be re-estimated and the FMP amended.

#### Information on Bycatch

The Magnuson-Stevens Act emphasizes the importance of bycatch effects on achieving sustainable fisheries. National standard 9 mandates that conservation and management measures shall, to the extent practicable, (1) minimize bycatch and (2), to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

Amendment 6 to the Scallop FMP identifies the following bycatch reduction and monitoring measures the State has implemented in accordance with national standard 9 of the Magnuson-Stevens Act: At-sea catch sampling, area closures, bycatch limits, and gear restrictions.

In 1993, the State implemented an observer program to monitor crab bycatch, as well as collect biological and fishery information on weathervane scallops in an effort to answer critical management questions. Efforts are underway to use data collected by observers to estimate abundance of scallops using a fishery-based stock assessment model. Other data are collected to define the biological season, define the time period of highest quality and quantity of product, gain insights into scallop recruitment and maturity, estimate the number and weight of discarded scallops, map scallop beds, determine the extent of bottom area dredged, and calculate catch per unit effort.

Observers collect bycatch data during the fishing season. Observers identify, count, and record the number of crab and Pacific halibut encountered, and collect information on the retained and discarded scallop catch. In addition to enumerating crab, carapace measurements, shell age, sex, injuries, and mortality are recorded. All Pacific halibut encountered are measured for length and examined for injuries and overall body condition. Management areas are closed by emergency order if established crab bycatch limits are reached.

The Council prepared an EA for each amendment that describes the

management background, the purpose and need for action, the management action alternatives, and the environmental and the socio-economic impacts of the alternatives. A copy of each EA can be obtained from the Council (see **ADDRESSES**).

The Director of the Alaska Fisheries Science Center, NMFS, has certified with reservations that the proposed definitions of overfishing comply with the provisions of the guidelines at 50 CFR 600.310(d)(5) that an overfishing definition must (1), have sufficient scientific merit, (2) are likely to result in effective Council action to protect the stock from closely approaching or reaching an overfished status, (3)

provide a basis for objective measurement of the status of the stock against the criteria, and (4) are operationally feasible. The crab and scallop overfishing definitions satisfy criteria (1), (3), and (4). However, there is not enough information to determine if the overfishing definitions satisfy criterion (2). Data currently available for species covered by these FMPs are inadequate to determine whether the selected MSSTs are greater than the minimum stock size at which rebuilding to the MSY level would be expected to occur within 10 years if the stock or stock complex were exploited at the MFMT.

NMFS will consider the public comments received during the comment period in determining whether to approve Amendment 7 to the BSAI crab FMP or Amendment 6 to the Scallop FMP. To be considered, comments must be received by the close of business on the last day of the comment period specified in this NOA; that does not mean postmarked or otherwise transmitted by that date.

Dated: November 24, 1998.

**Gary C. Matlock,**

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

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