

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0612242903-7445-03 and 0612242886-7464-03]

RINs 0648-AU48 and 0648-AU68

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea/Aleutian Islands Fishery Resources; American Fisheries Act Sideboards

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

ACTION: Final rule; correction.

SUMMARY: NMFS is correcting a final rule that appeared in the **Federal Register** on September 4, 2007. The final rule implemented Amendment 85 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) as partially approved by NMFS. In addition, NMFS is correcting another final rule that appeared in the **Federal Register** on September 14, 2007. This final rule implemented Amendment 80 to the FMP.

DATES: Effective January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907-586-7008.

SUPPLEMENTARY INFORMATION:

Background

Two final rules recently promulgated by NMFS contained several unintended errors that need to be corrected.

A final rule published on September 4, 2007 (72 FR 50788) implemented Amendment 85 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). Amendment 85 modified the current allocations of Bering Sea and Aleutian Islands (BSAI) Pacific cod total allowable catch, and seasonal apportionments thereof, among various harvest sectors. The final rule also included the allocation of Pacific cod to the Western Alaska Community Development Quota Program. All of the provisions of the Amendment 85 final rule were effective January 1, 2008 (September 4 rule). The final rule to implement Amendment 80 to the FMP was published on September 14, 2007 (72 FR 52668) (September 14 rule). Amendment 80 primarily allocated several BSAI non-pollock trawl groundfish fisheries among fishing sectors, facilitated the formation of harvesting cooperatives in the non-American Fisheries Act trawl catcher/processor sector, and established a limited access privilege program for that sector. Most provisions of the Amendment 80 final rule were effective October 15, 2007, but some provisions were effective January 1, 2008, or January 20, 2008. Some errors in the amendatory instructions became apparent when the Office of the **Federal**

Register (OFR) tried to make certain revisions to the 50 CFR Part 679 regulations in several paragraphs. This notice corrects those errors.

Need for Corrections

Each of the requested corrections is necessary to properly codify several provisions of final rules for Amendments 80 and 85 in the Code of Federal Regulations.

Tables follow the description for each needed correction in the September 4 or September 14 rule to provide a visual presentation of the problems.

In the September 4 rule, revisions to § 679.20(b)(1)(i) were necessary to remove Pacific cod from the non-specified reserve for BSAI groundfish fisheries and were to be effective January 1, 2008. This section, however, was re-written under the September 14 rule which incorporated the change made by Amendment 85 with new language for Amendment 80 that included Pacific cod under “Amendment 80 species”, and the revisions in the September 14 rule were effective October 15, 2007. NMFS intended the revision made by the September 14 rule to be the final change to § 679.20(b)(1)(i) made by the two rules. The September 4 rule is corrected by revising § 679.20(b)(1)(i) by inserting the phrase “which includes Pacific cod,” in between “Amendment 80 species,” and “is automatically” from the regulatory language implemented under the September 14 rule.

Revisions to § 679.20(b)(1)(i)			
Federal Register Document	Page number	Paragraph § 679.20	Instruction
(72 FR 50788; September 4, 2007 [Amendment 85] Effective: January 1, 2008	50818, in Remove/Add table	(b)(1)(i)	Remove text: “except pollock and the”
			Replace text with: “except pollock, Pacific cod, and the”
72 FR 52668; September 14, 2007 [Amendment 80] Effective: October 15, 2007	52720, third column	(b)(1)(i)	Revise paragraph

In the September 4 rule, changes to § 679.31 were necessary to revise three cross-references. Prior to the effective date of the September 4 rule, the September 14 rule revised and moved one of these cross-references, so that the

cross-reference revision in the September 4 rule cannot be made as instructed. This action removes this cross-reference revision from the September 4 rule. The September 14 rule redesignated the paragraph

containing the other two cross-reference revisions in the September 4 rule, so this action corrects the paragraph to be revised.

Changes to § 679.31			
Federal Register Document	Page number	Paragraph § 679.31	Instruction
(72 FR 50788; September 4, 2007 [Amendment 85] Effective: January 1, 2008	50818, in Remove/Add table	(c)	Remove: (See § 679.20(b)(1)(iii))
			Replace with: (See § 679.20(a)(7)(i) and (b)(1)(iii).)
72 FR 52668; September 14, 2007 [Amendment 80] Effective: October 15, 2007	52725, column 1	(c)	Instruction 12 a. Remove paragraphs (a)(2), (c), and (f); b. Redesignate paragraphs (b), (d), and (e) as paragraphs (a)(2), (3), and (4), respectively; e. Add and reserve paragraph (b);

Federal Register Document	Page number	Paragraph § 679.31	Instruction
(72 FR 50788; September 4, 2007 [Amendment 85] Effective: January 1, 2008	50818, in Remove/Add table	(e)	Remove: (See § 679.21(e)(1)(i) and (e)(2)(ii))
			Replace : (See § 679.21(e)(3)(i)(A) and (e)(4)(i)(A))
72 FR 52668; September 14, 2007 [Amendment 80] Effective: October 15, 2007	52725, column 1	(e)	Instruction 12 b. Redesignate paragraphs (b), (d), and (e) as paragraphs (a)(2), (3), and (4), respectively;

In the September 4 rule, amendment instruction 7.A concerning § 679.64(a)(1) inadvertently resulted in two paragraphs (a)(1)(ii). NMFS expected the new paragraph (a)(1)(ii) in amendment instruction 7.E to overwrite the original paragraph, but that is not

what occurred. Therefore, this action revises amendment instruction 7.A so that it removes the original paragraph (a)(1)(ii). The intention to remove the original paragraph was noted in the preamble to the proposed rule for Amendment 85 published on February

7, 2007 (72 FR 5654). The establishment of a separate Pacific cod allocation to the American Fisheries Act trawl catcher/processor sector eliminated the need for this sideboard.

§ 679.64(a)(1)			
Federal Register Document	Page number	Paragraph § 679.64	Instruction
(72 FR 50788; September 4, 2007 [Amendment 85] Effective: January 1, 2008	50818, column 1	(a)(1)(ii)	Instruction 7 Not redesignated nor removed
	50818, column 1	(a)(3) introductory text	Instruction 7 Redesignate as (a)(1)(ii) Result: Two (a)(1)(ii)

In the September 14 rule, in amendment instruction 14.c., § 679.64 (a)(1)(iii) was redesignated as (a)(i)(iv). The instruction should have included

the revision of this paragraph, and this notice corrects that error. The paragraph was correctly proposed for revision in the proposed rule to implement

Amendment 80, and the revision was set out in both the proposed and final rules. Therefore, this notice corrects the instruction error.

Federal Register Document	Page number	Paragraph § 679.64	Instruction
72 FR 52668; September 14, 2007 [Amendment 80] Effective: October 15, 2007	52725, column 3	(a)(1)(iii)	Instruction 14 c. Redesignate paragraph (a)(1)(iii) as (a)(1)(iv);

In the September 14 rule, amendment instruction 14.f. instructed that § 679.64 (a)(3) was to be revised. However, paragraph (a)(3) could not be revised

because no corresponding text for that paragraph was set out. NMFS never intended to revise paragraph (a)(3), and this paragraph was not proposed for

revision in the proposed rule to implement Amendment 80. Therefore, this notice removes that text from the instruction.

Federal Register Document	Page number	Paragraph § 679.64	Instruction
72 FR 52668; September 14, 2007 [Amendment 80] Effective: October 15, 2007	52725	(a)(3)	Revise paragraph Result: no corresponding text for that paragraph is set out on the following page after (a)(2), only five stars.

In the September 14 rule, on page 52668 in the **DATES** section, § 679.64(a)(3) and § 679.64(a)(1)(vi) were listed to be effective January 1, 2008.

However, paragraph (a)(3) was not revised in the September 14 rule, as noted above, and paragraph (a)(1)(vi) does not exist. These effective date

citations were made inadvertently and, therefore, this notice removes that text from the **DATES** section.

Federal Register Document	Page number	Paragraph	Instruction
72 FR 52668; September 14, 2007 [Amendment 80] Effective: October 15, 2007	52668	DATES	Says 679.64 (a)(1)(vi), to be effective on 1-1-08, but no such paragraph exists

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator of Fisheries finds good cause to waive prior notice and opportunity for public comment otherwise required by the section. NOAA finds that prior notice and opportunity for public comment are unnecessary because the changes to the amendatory instructions do not substantively change the requirements of these final rules. It was not the intention under Amendment 85 or Amendment 80 to retain obsolete language, incorrect cross-references, or incorrect instructions. Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.* are inapplicable.

The rule does not make any substantive change in the rights and obligations of fishermen managed under Amendment 80 or Amendment 85.

Because this action makes only non-substantive changes to Part 679 described above, this rule is not subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d).

Correction

Accordingly, the final rule, FR Doc. E7-17140, published on September 4, 2007 (72 FR 50788) is corrected as follows:

1. On page 50818, in the Remove/Add table, first row, revise column two to read "Amendment 80 species, is automatically"; revise column three to read "Amendment 80 species, which includes Pacific cod, is automatically"; and revise column four to read "1". This refers to paragraph 679.20(b)(1)(i).

2. On page 50818, in the Remove/Add table, revise the tenth row under the "Paragraph(s)" column, which refers to § 679.31(e), to read "\$ 679.31(a)(4)".

3. On page 50818, in the Remove/Add table, columns one, two, and three, remove the ninth row, which refers to paragraph 679.31(c).

4. On page 50818, first column, first paragraph, second and third lines, revise Instruction 7.A. to read "Remove paragraph (a)(1) introductory text and paragraph (a)(1)(ii)."

Accordingly, the final rule, FR Doc. 07-4358, published on September 14, 2007 (72 FR 52668) is corrected as follows:

5. On page 52668, column 1, **DATES** paragraph, remove "\$ 679.64(a)(1)(vi)" and § 679.64(a)(3)."

6. On page 52725, column 3, revise Instruction 14.c. to read "Redesignate paragraph (a)(1)(iii) as (a)(1)(iv) and revise it."

7. On page 52725, column 3, revise Instruction 14.f. to read "Revise paragraph (a)(2)."

Dated: May 7, 2008.

James W. Balsiger,
Acting Assistant Administrator For Fisheries,
National Marine Fisheries Service.

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