

Dated: December 9, 1999.

**Jamie Rappaport Clark,**

*Director, Fish and Wildlife Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 991221345-9345-01; I.D. 113099B]

RIN 0648-AL30

#### Fisheries of the Exclusive Economic Zone off Alaska; Prohibition of Nonpelagic Trawl Gear in the Bering Sea and Aleutian Islands Pollock Fishery

**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 57 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This action would consist of three regulatory changes. First, it would prohibit the use of nonpelagic trawl gear in the directed pollock fisheries of the Bering Sea and Aleutian Islands (BSAI). Second, the action would revise the existing performance standard for pelagic trawl gear. Third, crab and halibut bycatch limits established for the BSAI groundfish trawl fisheries would be reduced. This action is necessary to address bycatch reduction objectives in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and 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 February 14, 2000.

**ADDRESSES:** Comments may be mailed to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel or faxed to (907) 586-7465. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th St., Room 453, Juneau, AK 99801. Copies of Amendment 57 to the FMP and of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory

Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from NMFS at the above address or by calling the Alaska Region, NMFS, at (907)586-7228. Comments will not be accepted if submitted via e-mail or Internet.

#### FOR FURTHER INFORMATION CONTACT:

Nina Mollett, (907)586-7228.

#### SUPPLEMENTARY INFORMATION:

NMFS manages the domestic groundfish fisheries of the BSAI under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the Magnuson-Stevens Act. Regulations governing the groundfish fisheries of the BSAI appear at 50 CFR parts 600 and 679.

The Council has submitted Amendment 57 for Secretarial review. A Notice of Availability (NOA) of the FMP amendment was published on December 10, 1999 with comments on the FMP amendment invited through February 7, 2000. Written comments may address the FMP amendment, the proposed rule, or both, but must be received by February 7, 2000 to be considered in the decision to approve or disapprove the FMP amendment.

#### Background and Need for Action

This action is designed to comply with the Magnuson-Stevens Act, which emphasizes the importance of reducing bycatch to maintain sustainable fisheries. National Standard 9 of the Magnuson-Stevens Act mandates that conservation and management measures minimize bycatch, to the extent practicable, and minimize mortality where bycatch cannot be avoided.

More specific authority for the proposed rule is provided by paragraph 303(b)(2) of the Magnuson-Stevens Act. It states: "Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may \* \* \* designate zones where, and periods when, fishing \* \* \* shall be permitted only \* \* \* with specified types and quantities of fishing gear."

The objective of Amendment 57, as adopted by the Council at its June 1998 meeting, is to reduce bycatch in the BSAI pollock fishery. The proposed action to implement the amendment has three parts.

##### 1. Prohibition on Nonpelagic Trawl Gear in the BSAI Directed Pollock Fishery

Under existing regulations (§ 679.20(a)(5)(i)(B)), the Administrator of the Alaska Region, NMFS, in consultation with the Council, has authority to limit the amount of the total allowable catch (TAC) that may be taken

in the directed fishery for pollock using nonpelagic trawl gear. The Administrator accomplishes this by allocating TAC for pollock between pelagic and nonpelagic trawl gear types during the annual specification process. In practice, the Council has recommended allocating TAC between gear types only twice. In 1990, the Bering Sea pollock TAC was split 88 percent for pelagic gear and 12 percent for nonpelagic trawl gear during the annual specification process. No limit was placed on nonpelagic trawl gear during subsequent years until the 1999 season, when the entire pollock TAC was allocated to pelagic gear and none to nonpelagic gear. This step was taken in anticipation of Amendment 57 being approved.

Currently, NMFS has authority to prohibit nonpelagic trawling for pollock in the BSAI under § 679.21(e)(7)(i). When a prohibited species catch (PSC) allowance, or a seasonal apportionment of the allowance, is reached in the pollock/Atka mackerel/"other species" category, NMFS prohibits nonpelagic trawling for pollock either throughout the BSAI, or, depending on the PSC species, in the affected zone of the BSAI, for the remainder of the year.

The Council's rationale for permanently prohibiting nonpelagic trawling for pollock in the BSAI, instead of relying on existing measures, is that the prohibition is expected to result in needed bycatch savings while imposing a relatively low cost on the fishery. Pollock is the only fishery where both types of trawl gear are used, and already most fishing for pollock is conducted with pelagic trawl gear, which has a substantially lower bycatch rate of halibut and crab. Although operators who use both types of gear would lose some flexibility under this rule, participants in the pollock fishery would nevertheless be able to catch the TAC.

##### 2. Performance Standard

Existing regulations, establish a performance standard to discourage operators from fishing on the seabed with pelagic gear at times when nonpelagic trawl gear is prohibited in the BSAI. The regulations prohibit a vessel engaged in directed fishing for pollock from having 20 or more crabs of any species, with a carapace width of more than 1.5 inches (38 mm) at the widest dimension, on board at any one time. Crabs were chosen for the standard because they inhabit the seabed and, if caught with trawl gear, provide proof that a trawl has been in contact with the bottom. The proposed rule would clarify that the standard

would be in effect at all times for vessels in the BSAI directed fishery for pollock, because the use of nonpelagic trawl gear would be prohibited permanently.

### 3. PSC Limits

The proposed rule would reduce the bycatch limit for halibut and crab caught using trawl gear in the BSAI. The CDQ program would continue to receive 7.5 percent of each PSC limit, in accordance with § 679.21(e)(1), which contains the existing limits for each PSC species in the BSAI. The current halibut PSC allowance is 3,775 mt. Crab bycatch limits vary according to abundance and spawning biomass as determined by annual surveys.

Under the proposed rule, halibut bycatch mortality would be reduced by 100 mt. The PSC allowance for red king crabs would be reduced by 3,000 animals, for *C. bairdi* crabs by 50,000 animals, and for *C. opilio* crabs by 150,000 animals. For *C. bairdi* crabs, the limit would be lowered by 20,000 in Zone 1 and by 30,000 in Zone 2, reflecting the larger fishery there.

The Council recommended these reduced PSC limits after considering data on bycatch rates from vessels using pelagic gear while the performance standard was in effect. Two other options were considered: Option 1 would have reduced only the halibut bycatch limit, and Option 2 would have reduced bycatch by lesser amounts for all four PSC species. The Council chose the proposed approach because it represents a more realistic estimate of how much bycatch would be saved by prohibiting nonpelagic trawl gear. The analysis of all options and alternatives is contained in the EA/RIR/IRFA (see ADDRESSES).

### Pollock CDQ Fisheries

Under this rule, vessels fishing for CDQ pollock would be exempt from the nonpelagic trawl gear prohibition. This exemption is based on two reasons. First, the structure of the CDQ program provides a strong incentive to the CDQ groups and their harvesting partners to use fishing gear and fishing techniques that minimize the bycatch of non-target groundfish and prohibited species. Each CDQ group receives an allocation of all the groundfish TAC species. Each CDQ group is prohibited from exceeding these allocations. In accounting for the CDQ and prohibited species quota (PSQ) allocations, NMFS considers the catch by all vessels fishing for the CDQ group. Each CDQ group is each responsible for managing the catch of its CDQ and PSQ allocations so as to maximize the overall value of the CDQ fisheries. For example, if a CDQ group reaches its halibut PSQ

allocation, its members must stop all CDQ fishing for the group's remaining CDQ allocations, and thus forego the value of any unharvested groundfish. This management structure provides a substantial incentive to use pelagic gear away from the bottom in the pollock CDQ fisheries. In 1998, for example, 98 percent of the total pollock CDQ was harvested using pelagic trawl gear.

The incentive to use gear that will minimize PSC while fishing for pollock would be strengthened further by the proposed rule. The CDQ program, which currently receives a 7.5 percent allocation of each PSC species, would receive a reduced allocation of PSC under the rule, because it would continue to receive a 7.5 percent allocation of what would be a reduced overall PSC allowance. Therefore, although the prohibition on nonpelagic trawl gear in itself would not apply to the CDQ fisheries, the collateral reduction in PSC allowance would increase the effect of the existing incentive for CDQ groups to minimize the bycatch of PSQ species.

Second, NMFS currently does not have a definition for directed fishing for CDQ pollock. Without such a definition, a prohibition against using nonpelagic trawl gear while directed fishing for pollock would not be enforceable in the CDQ fisheries. NMFS is developing a definition for directed fishing for pollock in the CDQ fisheries under regulations implementing Amendment 66 to the BSAI groundfish FMP. In light of that definition, NMFS may consider extending the prohibition on the use of nonpelagic trawl gear in directed fisheries for BSAI pollock to the CDQ program. Such an extension would be subject to the normal process for public review and comment.

### Fishing Trip Definition

The proposed rule would change the "fishing trip" definition contained in § 679.2. Under the new definition, when a vessel begins fishing with a new gear type, it would be required to start recordkeeping for a new fishing trip. This change would enable, for example, a vessel legitimately fishing with nonpelagic trawl gear for yellowfin sole, and therefore under a maximum retainable bycatch restriction for pollock (see § 679.20(e)), to keep clear records if it switches to directed fishing for pollock using pelagic gear.

### Classification

At this time, NMFS has not determined that the amendment this rule would implement is consistent with the national standards 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.

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

The Council and NMFS prepared an Initial Regulatory Flexibility Analysis that describes the impact this proposed rule, if adopted, would have on small entities. Analysis of catch data from 1996 and 1997 indicates that very few vessels will be adversely affected by the Council's preferred alternative to the extent of having to buy or use new gear because most vessels fishing for pollock do so mostly using pelagic gear. In 1996, five small catcher vessels used nonpelagic trawl gear only. This number was reduced to two vessels in 1997. Total pollock harvests by the few catcher vessels using only nonpelagic trawl gear averaged 85 mt per year during 1996–1997, for an ex-vessel value of \$17,000, or about \$5,000 per vessel per year. This amount is likely to be a very small portion (<5 percent) of the annual gross revenues for the vessels in question. The few catcher vessels that use only nonpelagic trawl gear in the BSAI pollock fishery tend to concentrate on other fisheries such as Pacific cod and flatfish. For these small vessels, pollock represents a fishery of opportunity that is sometimes targeted when other fisheries are closed, but it is not their primary source of income. In addition, none of these vessels are believed to qualify as future participants in the BSAI pollock fishery under the American Fisheries Act (AFA), which limits participation in the BSAI pollock fishery to those vessels named in the AFA or meeting certain qualifying criteria. Under the AFA, the small vessels in question, with a few possible exceptions, are excluded from BSAI pollock fishery by statute and will be unaffected by the prohibition on the use of nonpelagic trawl gear. Of the approximately 120 catcher vessels that are expected to remain in the BSAI pollock fishery under the AFA, approximately 60 are small entities, and these vessels fish for pollock predominantly with pelagic trawl gear. Some catcher processors that target on larger pollock for fillet processing use nonpelagic trawl gear for pollock under certain circumstances, and these vessels may face impacts if nonpelagic trawl gear is prohibited. However, none of the catcher processors in the pollock fishery is a small entity under the RFA.

The crab performance standard may pose some unquantifiable inconvenience to vessels with pelagic gear, as they will be forced to fish only

in midwater. To the extent that they have chosen to do otherwise in the past, economic theory suggests that they have probably been gaining some economic advantage.

The reductions in overall PSC limits for halibut, red king crab, Tanner crab, and snow crab are not likely to cause significant impacts to small entities, as the proposed reductions are expected to mirror reductions in bycatch resulting from the prohibition on nonpelagic trawl gear.

The Council and NMFS considered alternative approaches for meeting the Magnuson-Stevens Act's requirement to minimize bycatch that would minimize the effect on small entities. While eliminating nonpelagic trawling in all fisheries in the BSAI, or eliminating nonpelagic trawling in pollock fisheries in the Gulf of Alaska would reduce bycatch more dramatically than the proposed approach, such measures would be expected to have far more significant effects on many more small entities. The no action alternative (alternative 1 in the EA), could result in fewer economic effects on small entities depending on the Council's future recommended allocations of pollock quota. However, it is not clear that the status quo would comply with the requirements of the Magnuson-Stevens Act.

NMFS also considered a regulatory amendment to split the pollock/Atka mackerel/other species category for purposes of allocating the PSC limits among fisheries, but rejected that approach because of the potential for major economic consequences.

While eliminating nonpelagic trawling in all fisheries in the BSAI, or eliminating nonpelagic trawling in pollock fisheries in the Gulf of Alaska would reduce bycatch more dramatically than the proposed approach, such measures would be expected to have far more significant effects on many more small entities.

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

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 22, 1999.

**Andrew A. Rosenberg,**

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

For the reasons discussed 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 § 679.2, the definition of "Fishing trip", is amended by redesignating paragraph (1)(iv) as paragraph (1)(v), removing the coordinating conjunction, "or," at the end of paragraph (1)(iii), and adding paragraph (1)(iv) to read as follows:

**§ 679.2 Definitions.**

\* \* \* \* \*

*Fishing trip* means:

(1) \* \* \*

(iv) The vessel begins fishing with different type of authorized fishing gear; or

\* \* \* \* \*

2. In § 679.7, paragraph (a)(14) is revised to read as follows:

**§ 679.7 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(14) *Trawl gear performance standard.* Use a vessel to participate in a directed fishery for pollock in the BSAI using trawl gear and have on board the vessel, at any particular time, 20 or more crabs of any species that have a carapace width of more than 1.5 inches (38 mm) at the widest dimension.

\* \* \* \* \*

**§ 679.20 [Amended]**

3. In § 679.20, paragraph (a)(5)(i)(B) is removed and paragraph (a)(5)(i)(C) is redesignated as (a)(5)(i)(B).

4. In § 679.21, paragraphs (e)(1)(ii)(A) through (C), (e)(1)(iii)(A) and (B), (e)(1)(iv)(A) through (C), and (e)(1)(v) are revised to read as follows:

**§ 679.21 Prohibited species bycatch management.**

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(A) When the number of mature female red king crabs is at or below the threshold of 8.4 million mature crabs or the effective spawning biomass is less than or equal to 14.5 million lb (6,577 mt), the Zone 1 PSC limit will be 32,000 red king crabs.

(B) When the number of mature female red king crabs is above the threshold of 8.4 million mature crabs and the effective spawning biomass is greater than 14.5 million lb but less than 55 million lb (24,948 mt), the Zone 1 PSC limit will be 97,000 red king crabs.

(C) When the number of mature female red king crabs is above the threshold of 8.4 million mature crabs and the effective spawning biomass is equal to or greater than 55 million lb,

the Zone 1 PSC limit will be 197,000 red king crabs.

(iii) \* \* \*

(A) *Zone 1.* When the total abundance of *C. bairdi* crabs is:

(1) 150 million animals or less, the PSC limit will be 0.5 percent of the total abundance, minus 20,000 animals.

(2) Over 150 million to 270 million animals, the PSC limit will be 730,000 animals.

(3) Over 270 million to 400 million animals, the PSC limit will be 830,000 animals.

(4) Over 400 million animals, the PSC limit will be 980,000 animals.

(B) *Zone 2.* When the total abundance of *C. bairdi* crabs is:

(1) 175 million animals or less, the PSC limit will be 1.2 percent of the total abundance, minus 30,000 animals.

(2) Over 175 million to 290 million animals, the PSC limit will be 2,070,000 animals.

(3) Over 290 million to 400 million animals, the PSC limit will be 2,520,000 animals.

(4) Over 400 million animals, the PSC limit will be 2,970,000 animals.

(iv) \* \* \*

(A) *PSC Limit.* The PSC limit will be 0.1133 percent of the total abundance, minus 150,000 *C. opilio* crabs, unless;

(B) *Minimum PSC Limit.* If 0.1133 percent multiplied by the total abundance is less than 4.5 million, then the minimum PSC limit will be 4.350 million animals; or

(C) *Maximum PSC Limit.* If 0.1133 percent multiplied by the total abundance is greater than 13 million, then the maximum PSC limit will be 12.850 million animals.

(v) *Halibut.* The PSC limit of halibut caught while conducting any trawl fishery for groundfish in the BSAI during any fishing year is an amount of halibut equivalent to 3,675 mt of halibut mortality.

\* \* \* \* \*

5. In § 679.24, paragraph (b)(4) is added to read as follows:

**§ 679.24 Gear limitations.**

\* \* \* \* \*

(b) \* \* \*

(4) *BSAI pollock nonpelagic trawl prohibition.* No person may use nonpelagic trawl gear to engage in directed fishing for non-CDQ pollock in the BSAI.

\* \* \* \* \*