

Dated: November 7, 1996.

John G. Rogers,

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 96-29694 Filed 11-19-96; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 960815223-6315-02; I.D. 081296A]

RIN 0648-A170

#### Fisheries of the Exclusive Economic Zone off Alaska; Allocations of Pacific Cod in the Bering Sea and Aleutian Islands Area

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Amendment 46 to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP). The measures established under Amendment 46 and implemented by this final rule include: Allocation of the Bering Sea and Aleutian Islands Management Area (BSAI) Pacific cod total allowable catch (TAC) among vessels using trawl gear, fixed gear (hook-and-line and pot), and jig gear; seasonal allowances of the fixed gear allocation of Pacific cod; and procedures for unused portions of one gear's allocation to be reallocated to other gear types. This action is necessary to respond to socioeconomic needs of the fishing industry that have been identified by the North Pacific Fishery Management Council (Council) and is intended to further the goals and objectives of the FMP.

**EFFECTIVE DATE:** January 1, 1997.

**ADDRESSES:** Copies of Amendment 46 and the environmental assessment/regulatory impact review (EA/RIR) prepared for Amendment 46 may be obtained from the North Pacific Fishery Management Council, 605 West Fourth Avenue, Suite 306, Anchorage, AK 99501; telephone: 907-271-2809.

**FOR FURTHER INFORMATION CONTACT:** Kent Lind, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The Pacific cod fishery in the exclusive economic zone (EEZ) of the BSAI is managed by NMFS under the FMP. The

FMP was prepared by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Regulations governing the groundfish fishery of the BSAI are set out at 50 CFR part 679. General regulations governing fisheries in the EEZ are set out at 50 CFR part 600.

#### Background

At its June 1996 meeting, the Council adopted Amendment 46 and recommended that NMFS prepare a rulemaking to implement the amendment. A notice of availability of Amendment 46 was published in the Federal Register on August 20, 1996 (61 FR 43035), and invited comment on the amendment through October 15, 1996. No written comments were received on the amendment. A proposed rule to implement Amendment 46 was published in the Federal Register on August 22, 1996 (61 FR 43325). Comments on the proposed rule were invited through October 3, 1996. One written comment on the proposed rule was received and is responded to in the Response to Comments section below.

Amendment 46 was approved by NMFS on November 7, 1996, under section 304(b) of the Magnuson Act. This amendment establishes FMP authority to: Allocate the BSAI Pacific cod TAC among vessels using trawl gear, fixed gear, and jig gear; divide the fixed gear allocation of Pacific cod into seasonal allowances; and reallocate unused portions of one gear's allocation to other gear types. Upon reviewing the reasons for Amendment 46, and the comments on the proposed rule to implement it, NMFS has determined that this action is necessary for the conservation and management of the BSAI Pacific cod fishery. Additional information on this action may be found in the preamble to the proposed rule and in the EA/RIR.

#### Management Measures

The following management measures are established by Amendment 46:

1. The BSAI Pacific cod TAC is allocated among gear types as follows: Fixed gear, 51 percent; trawl gear, 47 percent; and jig gear, 2 percent.

2. The BSAI Pacific cod TAC allocated to vessels using trawl gear is further allocated 50 percent to catcher vessels and 50 percent to catcher/processors.

3. The BSAI Pacific cod TAC allocated to vessels using fixed gear is divided into three seasons of 4 months each. The percentage of TAC apportioned to each season will be determined by NMFS in consultation with the Council according to the

following criteria: The seasonal distribution of prohibited species, the seasonal distribution of Pacific cod relative to prohibited species distribution, the expected variations in Pacific halibut bycatch rates throughout the fishing year, and the economic effects of any seasonal allowance of Pacific cod on the fixed gear fisheries.

4. NMFS may reallocate Pacific cod from vessels using trawl gear to vessels using fixed gear and vice versa anytime during the fishing year that the Administrator, Alaska Region, NMFS (Regional Administrator), determines that one gear group or the other would not be able to harvest its allocation of Pacific cod.

5. Any portion of the Pacific cod TAC allocated to vessels using jig gear and projected by NMFS to be unused by the end of the fishing year will be reallocated to vessels using fixed gear on September 15 of each fishing year.

6. Any unused fixed gear seasonal allocation will be reallocated in a manner determined by NMFS in annual consultation with the Council to promote the goals and objectives of the FMP. This measure could, for example, allow NMFS to reallocate unused fixed gear allocation from the first season to the third season when halibut bycatch rates, product quality, and markets are most advantageous.

#### Response to Comments

One letter of comment was received on the proposed rule and is summarized and responded to in the comment below:

*Comment:* We participated in the industry allocation negotiations for Pacific cod and supported the allocation agreement arrived at by the Council's industry negotiating committee. We continue to support the industry agreement and have only one clarification to make regarding NMFS' interpretation of the agreement in the proposed rule.

The proposed rule states that NMFS can reallocate unused portions of the annual Pacific cod TAC that one gear group or the other would not be able to harvest. From our perspective, the industry agreement was based on an understanding that reallocations within the trawl sector could be made, should that become necessary, and that type of reallocation would have the highest priority. The factory trawler sector's acceptance of the new 50/50 split of trawl sector allocation between catcher vessels and factory trawlers, which represents a smaller than historic share for factory trawlers, was in part based on an expectation that NMFS would, as a matter of priority, first reallocate any

Pacific cod TAC unused by one trawl sector to the other trawl sector. This condition is important because the 50/50 trawl split is a new feature and little or no understanding exists of how it will affect the amount of Pacific cod available to the trawl sector as a whole.

*Response:* NMFS agrees. Language was added to the final rule to clarify that any portion of a trawl gear allocation that is unused by one sector of the trawl fleet will first be made available to the other sector of the trawl fleet before being reallocated to other gear types.

**Changes from the Proposed Rule**

The only change from the proposed rule is the addition of a paragraph at § 679.20(a)(7)(ii)(A) to clarify that any trawl gear allocation that is unused by one sector of the trawl fleet will first be made available to the other sector of the trawl fleet before being reallocated to other gear types.

**Classification**

The Regional Administrator determined that Amendment 46 is necessary for the conservation and management of the BSAI Pacific cod fishery and that it is consistent with the Magnuson Act and other applicable laws.

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed, that it would not have a significant economic impact on a substantial number of small entities. The comment received and the change made to the rule in response thereto do not change the reason for that certification.

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

Fisheries, Reporting and Recordkeeping requirements.

Dated: November 13, 1996.  
 Rolland A. Schmitten,  
*Assistant Administrator for Fisheries,  
 National Marine Fisheries Service.*  
 For the reasons set out in the preamble, 50 CFR part 679 is 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.*

2. In § 679.20, paragraph (a)(7) is revised to read as follows:

**§ 679.20 General limitations.**

\* \* \* \* \*

(a) \* \* \*  
 (7) *Pacific cod TAC, BSAI—(i) TAC by gear.* (A) The BSAI TAC of Pacific cod, after subtraction of reserves, will be allocated 2 percent to vessels using jig gear, 51 percent to vessels using hook-and-line or pot gear, and 47 percent to vessels using trawl gear.

(B) The portion of Pacific cod TAC allocated to trawl gear under paragraph (a)(7)(i)(A) of this section will be further allocated 50 percent to catcher vessels and 50 percent to catcher/processors as defined for the purposes of recordkeeping and reporting at § 679.2.

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

(ii) *Unused gear allocations—(A) Reallocation within the trawl sector.* If, during a fishing year, the Regional Director determines that either trawl catcher vessels or trawl catcher/processors will not be able to harvest the entire amount of Pacific cod in the BSAI allocated to those vessels under paragraph (a)(7)(i) or (a)(7)(ii)(B) of this section, NMFS will first make the projected unused amount of Pacific cod available to the other trawl vessel sector before any reallocation to vessels using other gear types.

(B) *Reallocation between gear types.* 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 in the BSAI allocated to those vessels under paragraphs (a)(7)(i) or (a)(7)(iii) of this section, NMFS may reallocate the projected unused amount of Pacific cod to vessels harvesting Pacific cod using the other gear type(s) through notification in the Federal Register.

(iii) *Reallocation of TAC specified for jig gear.* On September 15 of each year, the Regional Director will reallocate any projected unused amount of Pacific cod in the BSAI allocated to vessels using jig gear to vessels using hook-and-line or pot gear through notification in the Federal Register.

(iv) *Seasonal allowances—(A) Time periods.* NMFS, after consultation with the Council, may divide the TAC allocated to vessels using hook-and-line or pot gear under paragraph (a)(7)(i) of this section among the following three periods: January 1 through April 30, May 1 through August 31, and September 1 through December 31.

(B) *Factors to be considered.* NMFS will base any seasonal allowance of the Pacific cod allocation to vessels using hook-and-line and pot gear on the following information:

(1) Seasonal distribution of Pacific cod relative to prohibited species distribution.

(2) Variations in prohibited species bycatch rates in the Pacific cod fisheries throughout the fishing year.

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

(C) *Unused seasonal allowances.* Any unused portion of a seasonal allowance of Pacific cod allocated to vessels using hook-and-line or pot gear will be reallocated to the remaining seasons during the current fishing year in a manner determined by NMFS, after consultation with the Council.

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