

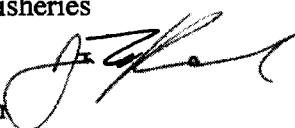


**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

September 22, 2011

MEMORANDUM FOR: Eric C. Schwaab
Assistant Administrator for Fisheries

FROM: ^{FW} James W. Balsiger, Ph.D. 
Administrator, Alaska Region

SUBJECT: Approval of Amendment 83 to the Fishery Management Plan for
Groundfish of the Gulf of Alaska, RIN 0648-AY53--DECISION
MEMORANDUM

I intend, with your concurrence, to approve Amendment 83 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

BACKGROUND

Pacific cod total allowable catch (TAC) in the Gulf of Alaska is apportioned on the basis of processor component and season as established under Amendment 23 to the FMP (57 FR 23321, June 3, 1992). Since implementation, 90 percent of the Pacific cod TAC is allocated to vessels catching Pacific cod for processing by the inshore component and 10 percent of the Pacific cod TAC is allocated to vessels catching Pacific cod for processing by the offshore component. TACs are further apportioned for Pacific cod in the Western, Central, and Eastern Gulf of Alaska (GOA) regulatory areas. In recent years, competition among participants in the Western and Central GOA Pacific cod fisheries has intensified due in part to the derby-style race for fish and competition among the various gear types for shares of the TACs. Without sector allocations, future harvests by some sectors may increase and impinge on historical levels of catch by other sectors.

The proposed action would supersede the current 90/10 percent inshore/offshore processing allocations and instead divide the Western and Central GOA Pacific cod TACs among the various gear and operation types. The Eastern GOA regulatory area would retain the current 90%/10% inshore/offshore processing allocations. Sector allocations in the Western and Central GOA would limit the proportion of the respective Pacific cod TACs that each sector is authorized to harvest. The sector allocations are intended to reduce competition among sectors and promote stability in each fishery. This amendment to the FMP would limit access to the Pacific cod parallel fishery for federal fishery participants throughout the GOA, while promoting community participation and providing incentives for new entrants in the jig sector.



Amendment 83 would define sectors based on operation type and gear type, including hook-and-line, trawl, pot, and jig. In both the Western and Central GOA, the pot catcher vessel (CV) sector and pot catcher/processor (C/P) sector would be combined. The rationale for combining these sectors is that the pot C/P sector has historically been relatively small and would receive a small, difficult to manage allocation. Moreover, the majority of vessels that have participated as pot C/Ps in the GOA Pacific cod fishery in recent years also have fishing history as pot CVs, and would contribute catch history to both the pot C/P and CV allocations.

Amendment 83 would expand opportunities for jig vessels, by providing an initial allocation that is above the sector's historical catch in the fishery, and the opportunity for incremental increases to the jig allocation, if it is fully harvested. Historically, jig gear has been used by small-boat entry level operators, and the North Pacific Fishery Management Council (Council) sought to provide access for these participants. Any increases in the jig allocation would result in proportional reductions to the allocations to the other sectors.

The Council considered a broad range of historic and recent participation when selecting the allocations to sectors. Allocations were calculated by taking each sector's "best option" from four sets of years in the Western GOA and six sets of years in the Central GOA for calculating catch history, and then scaling allocations so that they sum to 100 percent. In the Western GOA, the four sets of years for calculating catch history included the 1995 through 2005 time period. The options in the Central GOA do not include the 1995 through 2000 time period and were based on participation from 2000 through 2008. While there was a reduction in trawl catch concurrent with implementation of the Steller sea lion protection measures in 2001 in the Central GOA, the shift was less dramatic than in the Western GOA.

Amendment 83 is intended to protect historical processing and community delivery patterns established in the GOA groundfish fisheries. The action would limit the use of mobile floating processors, commonly known as motherships. Amendment 83 would establish a mothership processing cap at 2 percent of the Western GOA Pacific cod TAC, and prohibit mothership activity in the Central GOA. In the Central GOA, no motherships have processed groundfish since 2000. In the Western GOA, there has been limited mothership activity. In addition, NMFS would establish separate processing caps for motherships operating within the marine municipal boundaries of specific GOA communities reliant on GOA fishery resources. Annually, eligible permit holders would be allowed to process up to 3 percent of the respective Western and Central GOA TACs, provided that they operate within the municipal boundaries of Community Quota Entity (CQE) communities. The action is intended to provide CQE communities additional processing opportunities and possibly economic benefits resulting from any increase in mothership processing activity.

If approved Amendment 83 would preclude federally permitted vessels that do not have license limitation program (LLP) licenses from participating in the Western or Central GOA Pacific cod parallel fishery. The GOA parallel fishery is a fishery occurring within State of Alaska (State) waters that is opened by the State concurrent with the Federal season to allow vessels to fish off of the Federal TAC within State waters. If GOA Pacific cod sector allocations are established, parallel waters activity by federally permitted vessel operators who do not hold LLP licenses

could erode the catches of historical participants who contributed catch history to the sector allocations and depend on the GOA Pacific cod resource. Vessels fishing in federal waters are required to hold an LLP license with the appropriate area, gear, and species endorsements, but vessels fishing in parallel state waters are not required to hold an LLP license. This action would be necessary to prevent vessels without LLP licenses from fishing within State waters for federal TAC allocations of Pacific cod.

Similarly, vessel owners that fish for Pacific cod in the federal waters have surrendered their Federal Fishing Permit (FFP) before fishing in State waters to avoid NMFS observer, VMS, and recordkeeping and reporting requirements, only to have the FFPs reissued for the opening of the Federal waters fishery. To prevent operators from circumventing these requirements, this action would limit vessel operators throughout the GOA to one FFP reactivation during the 3-year term of the permit.

NMFS published a notice of availability for Amendment 83 on June 28, 2011 (76 FR 37763). A proposed rule to implement Amendment 83 was published July 26, 2011 (76 FR 44700). The comment period on the proposed rule ended on September 9, 2011. The comment period on the notice of availability ended on August 29, 2011. NMFS received five comment letters from four unique individuals regarding the FMP amendment and the proposed rule. One comment letter strongly supported the proposed action, four comments letters generally supported the FMP amendment and proposed rule. Most of the substantive comments raised technical questions about specific language of the proposed rule, but not of the proposed FMP amendment.

Several comments recommend partial approval of Amendment 83 stating that provisions of the action were not adequately considered by the Council and that the Council process did not provide for meaningful opportunity for public comment. One comment requested that the Secretary of Commerce not approve provisions of the action that would increase allocations to the jig sector based on the performance of that sector because additional public process would be needed to vet further increase of Pacific cod TAC allocations to the jig sector that would affect the trawl CV sector. A second comment requested that the Secretary of Commerce not approve the proposed TAC allocations to the trawl CV sector citing a perceived bias in the Council recommended participation estimates did not include the trawl CV sector's historic use of Pacific cod discards in other fisheries. A third comment suggests that the Secretary of Commerce reject the non-AFA crab sideboards; however, the FMP amendment does not address sideboards.

The Council described the rationale and mechanisms for jig and trawl CV allocations during its deliberations. The Council discussed the impacts of the proposed increase in allocation to the jig sector and recommend that the jig sector be allocated TAC prior to the allocation of TAC to other sectors. Thus, each subsequent non-jig sector allocation would be reduced proportionally. Similarly, the Council did not recommend the inclusion of historic discard rates of Pacific cod in their calculation of historic participation in the establishment of each sector's allocation. In both cases, the record reflects that the data used was the best available and does not bias the allocation for or against any particular sector. The impacts of these provisions were analyzed in the environmental assessment, regulatory impact review, and initial regulatory flexibility analysis for this action. Public comments and the analysis were considered by the Council prior to taking

final action. All comments received by the end of the comment period, whether specifically directed to the FMP amendment or the proposed rule, were considered in the decision to approve. All comments will be summarized and responded to in the preamble to the final rule which will be submitted for publication at a later date.

Agency approval, disapproval, or partial approval of the FMP amendment is scheduled for September 28, 2011.

CERTIFICATION

I certify Amendment 83 to the FMP to be consistent with the national standards and other provisions of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws. Determinations supporting this finding are attached.

RECOMMENDATION

I recommend that you concur in the approval of Amendment 83 to the FMP. I also recommend that you sign the attached information memorandum to the NOAA General Counsel.

1. I concur. _____  _____ 9-23-11
Date

2. I do not concur. _____
Date

Attachments

ATTACHMENT

DETERMINATIONS

NATIONAL ENVIRONMENTAL POLICY ACT

Based on the environmental assessment (EA), regulatory impact review, and initial regulatory flexibility analysis under the Regulatory Flexibility Act, review of the NEPA criteria for significant effects (40 CFR Part 1508.27), a review of NMFS criteria for significance evaluated above (NAO 216-6, Section 6.02), and based on the information provided in the accompanying finding of no significant impact, no significant effect on the quality of the human environment is anticipated from this action.

COASTAL ZONE MANAGEMENT ACT (CZMA)

On July 1, 2011, the federally approved Alaska Coastal Management Program expired, resulting in a withdrawal from participation in the CZMA's National Coastal Management Program. The CZMA Federal consistency provision in section 307 no longer applies in Alaska.

REGULATORY FLEXIBILITY ACT (RFA)

An initial regulatory flexibility analysis was prepared (a final RFA will be completed with submission of the final rule) as part of the regulatory impact review, which describes the impact this Amendment 83 would have on small entities.

PAPERWORK REDUCTION ACT (PRA)

This action contains a collection-of-information requirement subject to the PRA. The requirement was approved by the Office of Management and Budget (OMB) under OMB Control Numbers 0648-0206, -0213, -0334, -0445, and -0515.

ENDANGERED SPECIES ACT (ESA)

I have determined that fishing activities conducted pursuant to this rule will not affect endangered and threatened species or critical habitat in any manner not considered in prior consultations on this fishery.

MARINE MAMMAL PROTECTION ACT (MMPA)

I have determined that fishing activities conducted under the Amendment 83 will have no adverse impact on marine mammals. The EA prepared for this action concluded that it will not have an adverse impact on marine mammals. This Amendment will not implement changes in the temporal or spatial distribution of harvest or overall level of fishing effort. Consequently, this action will not affect fishing or processing activities in ways not previously considered and analyzed in the Programmatic Supplemental Environment Impact Statement prepared for the BSAI and GOA groundfish fisheries

EXECUTIVE ORDER 12866 (E.O. 12866)

Pursuant to the procedures established to implement section 6 of E.O. 12866, the Office of Management and Budget has determined that this final rule is not significant.

EXECUTIVE ORDER 13132 (E.O. 13132)

This action does not contain policies with federalism implications under E.O. 13132.

ESSENTIAL FISH HABITAT (EFH)

The area affected by Amendment 83 in the groundfish fisheries has been identified as EFH for the FMP for GOA groundfish. The EA prepared for this amendment concluded that this action will have no adverse impact on EFH. Amendment 83 would not expand or otherwise modify fishing activities in EFH, and would not affect EFH in ways not already considered and analyzed in the EFH consultations for the 2007 Alaska Groundfish Harvest Specifications Final Environmental Impact Statement prepared for the GOA groundfish fisheries. Amendment 83 in the context of the fishery as a whole will not have an adverse impact on EFH; therefore, an EFH consultation is not required.

INFORMATION QUALITY ACT (IQA)

Pursuant to Section 515 of Public Law 106-554, this information product has undergone a pre-dissemination review by the Sustainable Fisheries Division, Alaska Regional Office, completed on May 10, 2011. The signed Pre-dissemination Review and Documentation Form is on file in that Office and a copy of the form is included with this package. Amendment 83 is substantially unchanged from the proposed rule and no new information has been developed or presented and considered, therefore, the IQA determination remains the same.