

(5) Implement area closures to reduce damage to habitat from squid-mackerel-butterfish fisheries,

(6) Increase the minimum codend mesh size requirement in the *Loligo* fishery,

(7) Modify the exemption of the *Illex* fishery from the minimum codend mesh size requirement of the *Loligo* fishery,

(8) Modify the *Loligo* incidental catch limit in the *Illex* fishery during *Loligo* fishery closures,

(9) Establish a requirement for electronic daily reporting in the directed *Illex* fishery,

(10) Establish gear restricted areas that are seasonally closed to small-mesh gear.

#### Dates and Locations of the Hearings

Monday May 14, 2007: Hilton Garden Inn Providence Airport, One Thuber Street, Warwick, RI 02886.

Tuesday, May 15, 2007: Holiday Inn Express East End, 1707 Old Country Road, Riverhead, NY 11901.

Wednesday, May 16, 2007: The Grand Hotel, 1045 Beach Ave., Cape May, NJ 08204.

Thursday, May 17, 2007: Days Inn Norfolk Airport, 5708 Northampton Blvd., Virginia Beach, VA 23455.

#### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Bryan at the Mid-Atlantic Council Office (302) 674-2331 extension 18 at least five days prior to the meeting date.

Dated: April 24, 2007.

**James P. Burgess,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[I.D. 041 307D]

RIN 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:** Notification of availability; request for comments.

**SUMMARY:** The North Pacific Fishery Management Council (Council) has submitted Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) to NMFS for review. If approved, Amendment 80 would allocate several Bering Sea and Aleutian Islands (BSAI) non-pollock trawl groundfish species among trawl fishing sectors, and facilitate the formation of harvesting cooperatives in the non-American Fisheries Act (AFA) trawl catcher/processor sector. Amendment 80 is necessary to increase resource conservation and improve economic efficiency for harvesters who participate in the BSAI groundfish fisheries. This proposed amendment also is necessary to implement recent changes to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) that modify the allocation of groundfish resources in the BSAI to the Western Alaska Community Development Quota (CDQ) Program, and statutory mandates that define who is eligible to harvest fish in the non-AFA catcher/processor sector for a defined list of non-pollock groundfish species in the BSAI. This action is intended to promote the goals and objectives of the MSA, the FMP, and other applicable laws. The amendment is available for public review and comment.

**DATES:** Comments on Amendment 80 must be received on or before June 29, 2007.

**ADDRESSES:** Send written comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian, Records Officer. Comments may be submitted by:

- Hand delivery: 709 West 9th Street, Room 420A, Juneau, AK;
- E-mail: 0648-

AU68NOA80@noaa.gov. Include in the subject line the following document identifier: Amendment 80 RIN 0648-AU68. E-mail comments, with or without attachments, are limited to 5 megabytes;

- Fax: 907-586-7557;
  - Mail: P.O. Box 21668, Juneau, AK 99802-1668; or
  - Webform at the Federal eRulemaking Portal: <http://www.regulations.gov>.
- Follow the instructions at that site for submitting comments.

Copies of the Amendment 80 Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from the NMFS Alaska Region website at [www.fakr.noaa.gov](http://www.fakr.noaa.gov) or from the mailing and street addresses listed above.

**FOR FURTHER INFORMATION CONTACT:** Glenn Merrill, 907-586-7228 or [glenn.merrill@noaa.gov](mailto:glenn.merrill@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The MSA requires that each regional fishery management council submit any FMP or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary. The MSA also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** that the FMP or amendment is available for public review and comment. This requirement is satisfied by this notice of availability for Amendment 80.

#### Amendment 80 and Bycatch Reduction Efforts in the BSAI

Amendment 80 and its implementing regulations would continue initiatives by the Council and NMFS to reduce bycatch of fish species in the BSAI non-pollock trawl groundfish fisheries. Amendment 80 would reduce the amount of halibut and crab bycatch, known as prohibited species catch (PSC), that may be taken while non-AFA trawl catcher/processors are fishing for groundfish in the BSAI. These measures would consider efficiency in utilization of fishery resources, minimize costs, and further minimize bycatch to the extent practicable, thereby meeting the objectives of National Standards 5, 7, and 9 of the MSA.

Amendment 80 would facilitate this and other bycatch reductions through specific economic incentives provided by a limited access privilege program (LAPP). This LAPP would encourage improved retention and utilization of fishery resources by allocating specific amounts of certain species of non-pollock groundfish, and halibut and crab PSC, to non-AFA trawl catcher processors; and authorize the formation of cooperatives that would receive exclusive harvest privileges for a portion of these fishery resources.

One of the primary reasons for the relatively high discard rates of groundfish by non-AFA trawl catcher/processors is the nature of the fisheries in which those vessels participate. The non-AFA trawl catcher/processor sector primarily participates in non-pollock groundfish fisheries. The non-pollock groundfish fisheries are primarily comprised of groups of species that share similar habitat (e.g., flatfish fisheries such as rock sole, flathead sole, and yellowfin sole). Because these species occur together, they are typically harvested together. When a non-AFA trawl catcher/processor retrieves its net, very often multiple

species of fish are present. If a vessel operator is targeting only one species of fish, and other species are retrieved along with the desired catch, the vessel operator may have an incentive to discard the less valuable species and retain only the higher value species. The multi-species nature of these fisheries makes it difficult for vessel operators to target only one species, and an economic incentive exists to discard less valuable fish.

NMFS establishes a total allowable catch (TAC) for each groundfish species based on the species's annual biomass with the goal of providing a conservatively managed sustainable yield. In the non-pollock groundfish fisheries, harvesters compete for the TAC, resulting in a "race for fish," wherein vessels attempt to maximize their harvest in as little time as possible, in order to claim a larger share of the available TAC. This race for fish only increases the economic incentive to discard less valuable species in a multi-species harvest, and accelerate the harvest rate for the more valuable species.

Because vessel operators are competing with each other for shares of a common quota, a vessel operator has little economic incentive to undertake actions to reduce unwanted incidental catch, such as searching for fishing grounds with lower incidental catch rates, or use gear modifications that may reduce bycatch but have a lower harvest rate, if those actions would limit the ability of that vessel to effectively compete with other vessels.

Additionally, a vessel operator has little incentive to process and store less valuable species if by doing so, he loses an opportunity to use that processing or storage capacity for more valuable catch. Therefore, an individual vessel operator has strong incentives to harvest fish as quickly as possible, and discard less valuable species, before the TAC limit is reached because all vessel operators are competing for a limited TAC.

Additionally, non-pollock groundfish fisheries are constrained by catch limits for non-target species, such as halibut, red king crab, *Chinocetes bairdi* crab, and *C. opilio* crab. Halibut and crab are harvested in other fisheries and cannot be retained by vessels using trawl gear. NMFS establishes prohibited species catch (PSC) limits for halibut in the entire BSAI, and red king crab, *C. opilio* crab, and *C. bairdi* crab in specific areas of the BSAI to limit the adverse impact of harvesting operations on the long-term productivity of those species. NMFS monitors these PSC limits, and may close or otherwise restrict trawl harvests if PSC limits are projected to be

reached. Fishery closures due to reaching PSC limits can limit harvest of the groundfish TAC and reduce overall revenue to vessel operators and crew. As vessel operators seek to maximize harvest of TAC, they may accelerate fishing operations to maximize harvest before a crab or halibut PSC limit is reached. A "race for PSC" further exacerbates competition and the incentives to harvest rapidly, resulting in greater potential waste and higher discard rates of less valuable groundfish species.

The multi-species nature of non-pollock groundfish fisheries further limits the ability of a fisherman to specifically target valuable groundfish species as they race with their competitors. Vessel operators may discard considerable portions of their catch to maximize harvests of more valuable species even though the discarded species may have considerable market value if competition did not create such a strong incentive to maximize harvests of the more valuable species in as short a time as possible.

#### LAPP Management

The primary method to offset the economic incentives that lead to a race for fish and relatively high discard rates is to reduce the impact of those incentives through a LAPP. LAPPs have been used extensively in the North Pacific as a means to encourage economic efficiency and less wasteful harvest methods, and to resolve allocation disputes among harvesters by providing a group of harvesters with exclusive harvest privileges that can be traded. North Pacific LAPPs include (1) the halibut and sablefish individual fishing quota (IFQ) Program (November 9, 1993, 58 FR 59375); (2) the AFA (December 30, 2002, 67 FR 69692); (3) the BSAI Crab Rationalization Program (March 2, 2005; 70 FR 10174); and (4) the Central GOA Rockfish Program (November 20, 2006; 71 FR 67210). An extensive discussion of LAPPs can be found in the EA/RIR/IRFA prepared for this action (see **ADDRESSES**).

Based on experience with past LAPPs, and after weighing potential advantages and disadvantages, the Council adopted Amendment 80 to create economic incentives that provide additional opportunities to reduce bycatch while increasing the potential for greater economic returns to persons holding the harvest privileges. Amendment 80 would provide an incentive for non-AFA trawl catcher/processors to harvest non-pollock groundfish in a less wasteful manner by granting an exclusive harvest privilege to a limited

number of harvesters. Amendment 80 would encourage participants to harvest more efficiently and less wastefully by allowing them to choose to (1) form one or more harvesting cooperatives with other harvesters that would receive an exclusive annual harvest privilege of specific groundfish species and PSC; or (2) fish in a limited access fishery comprised of fishery participants that choose not to join a cooperative. The principal benefits from Amendment 80 would be realized by harvesters that choose to join a cooperative.

#### Overview of Amendment 80

The Council adopted Amendment 80 to meet the broad goals of: (1) improving retention and utilization of fishery resources by the non-AFA trawl catcher/processor fleet; (2) allocating fishery resources among BSAI trawl harvesters in consideration of historic and present harvest patterns and future harvest needs; (3) authorizing the allocation of groundfish species to harvesting cooperatives and establishing a LAPP for the non-AFA trawl catcher/processors to reduce potential bycatch reduction costs, encourage fishing practices with lower discard rates, and improve the opportunity for increasing the value of harvested species; and (4) limiting the ability of non-AFA trawl catcher/processors to expand their harvesting capacity into other fisheries not managed under a LAPP.

As with all other LAPPs in the North Pacific, the extensive changes to existing management of BSAI non-pollock trawl fisheries proposed by Amendment 80 would affect a wide range of fishing practices and regulations. Amendment 80 would affect management of the non-AFA trawl catcher/processors, and all other BSAI trawl fishery participants. As such, Amendment 80 proposes a complex suite of measures to ensure the goals of Amendment 80 are met and to minimize potential adverse impacts on other affected fishery participants.

The following section provides an overview of the suite of measures Amendment 80 proposes to implement.

##### 1. Community Development Quota (CDQ) Program

Amendment 80 would incorporate statutory mandates in the MSA as amended by Section 416 of the Coast Guard and Maritime Transportation Act of 2006 (Public Law 109-241; July 11, 2006), and the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Public Law 109-479, January 12, 2007). The proposed rule would modify the percentage of the total allowable catch (TAC) for directed

fisheries that are allocated to the CDQ Program, and the percentage of halibut, crab, and salmon prohibited species catch (PSC) allocated to the CDQ Program as prohibited species quota. Also proposed are other provisions necessary to bring Amendment 80 and the CDQ Program into compliance with applicable law.

## 2. Amendment 80 Sector and Amendment 80 Vessels

Eligible Amendment 80 sector participants would be defined by applicable legislation and the implementing regulations. Amendment 80 would incorporate statutory mandates in section 219 of the Consolidated Appropriations Act of 2005 (Public Law 108-447; December 8, 2004) which defines who is eligible to harvest fish in the non-AFA catcher/processor sector for a defined list of non-pollock groundfish species. Amendment 80 would define the "Amendment 80 sector" as non-AFA trawl catcher/processor harvesters eligible to fish under this statutory mandate. The list of non-AFA trawl catcher/processor vessels that may be used to fish in the Amendment 80 sector are called "Amendment 80 vessels."

## 3. Amendment 80 Species

Amendment 80 would allocate a specific portion of six non-pollock groundfish species among trawl fishery sectors. These six species would be the "Amendment 80 species," and include Aleutian Islands Pacific ocean perch, BSAI Atka mackerel, BSAI flathead sole, BSAI Pacific cod, BSAI rock sole, and BSAI yellowfin sole. These Amendment 80 species would be allocated between the Amendment 80 sector and all other BSAI trawl fishery participants. These other trawl fishery participants include AFA catcher/processors, AFA catcher vessels, and non-AFA catcher vessels. Collectively, this group of trawl fishery participants comprises the "BSAI trawl limited access sector." These six species are economically valuable and have historically been targeted by non-AFA trawl catcher/processors, but fisheries associated with these species have high rates of discard of other groundfish species.

## 4. Allocations of TAC and PSC in the BSAI Trawl Fisheries

Each year, NMFS would allocate an amount of Amendment 80 species available for harvest, and crab and halibut PSC to two defined groups of trawl fishery participants: (1) the Amendment 80 sector; and (2) the BSAI trawl limited access sector. The amount of Amendment 80 species TAC assigned

to each sector would be based on the amount of TAC remaining after allocation to the CDQ Program and for incidental catch allowance requirements in other fisheries as necessary. This allocation amount is termed the initial TAC (ITAC). Allocations made to one sector would not be subject to harvest by participants in the other fishery sector except under a specific condition. Fish that are allocated to the BSAI trawl limited access sector and projected to be unharvested could be reallocated to Amendment 80 cooperatives.

Amendment 80 would further address the Council's goals of reducing bycatch and discard of groundfish species by reducing the total amount of crab and halibut PSC allocated to the Amendment 80 sector.

## 5. BSAI Trawl Limited Access Sector

Amendment 80 would provide a specific allocation of Amendment 80 species and crab and halibut PSC to this sector. Amendment 80 would modify the calculation of AFA sideboard limits for Amendment 80 species and crab and halibut PSC limits as necessary to allow the efficient operation of AFA vessels.

## 6. Amendment 80 Quota Share

Amendment 80 would assign Amendment 80 quota share (QS) for Amendment 80 species to the owners of Amendment 80 vessels. Amendment 80 QS could be used to yield an exclusive harvest privilege for a portion of the Amendment 80 sector ITAC. Amendment 80 would establish criteria for harvesters in the Amendment 80 sector to apply for and receive QS, criteria for initially allocating QS, and criteria for the transfer of QS.

Amendment 80 would assign Amendment 80 QS based on historic catch patterns of an Amendment 80 vessel during 1998 through 2004. Amendment 80 would assign QS based on the relative proportion of an Amendment 80 species harvested by an Amendment 80 vessel compared to all other Amendment 80 vessels.

Amendment 80 would assign Amendment 80 QS only to members of the Amendment 80 sector who submit a complete application for Amendment 80 QS. In most cases, Amendment 80 would assign the Amendment 80 QS to an Amendment 80 vessel owner. In specific cases where an Amendment 80 vessel has been lost or is otherwise permanently ineligible to fish in U.S. waters, the Amendment 80 QS would be assigned to the holder of the license limitation Amendment 80 (LLP) license originally assigned to that Amendment 80 vessel. Once Amendment 80 QS is assigned based on the historic catch

patterns of an Amendment 80 vessel, it could not be divided or transferred separately from that Amendment 80 vessel. If Amendment 80 QS is assigned to the LLP license originally issued for that Amendment 80 vessel, it could not be transferred separately from that LLP license.

## 7. Amendment 80 Cooperatives

Persons who receive Amendment 80 QS would be able to join a cooperative to receive an exclusive harvest privilege for a portion of the ITAC. Amendment 80 QS holders would be able to form a cooperative with other Amendment 80 QS holders on an annual basis, provided they meet specific criteria. Each Amendment 80 cooperative would receive an annual cooperative quota (CQ), an amount of Amendment 80 species ITAC that would be for the exclusive use by that cooperative for harvest in a given year. Amendment 80 would establish requirements for forming an Amendment 80 cooperative with other Amendment 80 QS holders, the allocation of annual CQ to a cooperative, and transfers of CQ among cooperatives. A cooperative would receive an amount of CQ equivalent to the proportion of QS held by all of the members of the cooperative relative to the total QS held by all Amendment 80 QS holders.

Each Amendment 80 cooperative would receive an annual CQ with an exclusive limit on the amount of crab and halibut PSC the cooperative can use while harvesting in the BSAI. This halibut and crab PSC CQ would be assigned to a cooperative proportional to the amount of Amendment 80 QS held by the members, and would not be based on the amount of crab or halibut PSC historically used by the cooperative members.

Amendment 80 would provide opportunities for Amendment 80 sector participants to trade harvest privileges among cooperatives to further encourage efficient fishing operations. An Amendment 80 cooperative would not be able to transfer CQ to the Amendment 80 limited access fishery, or to the BSAI trawl limited access sector.

A cooperative structure may allow Amendment 80 vessel operators to manage PSC rates more efficiently than vessels who must race to harvest fish as quickly as possible before a PSC limit is reached and a fishery is subject to closure. By reducing PSC through more efficient cooperative operations, such as through gear modifications that reduce PSC use, Amendment 80 vessel operators may also increase the harvest of valuable targeted groundfish species

and improve revenues that would otherwise be foregone if a fishery were closed due to reaching PSC limits.

Amendment 80 would allow Amendment 80 cooperatives to receive a rollover of an additional amount of CQ, if a portion of the Amendment 80 species or crab or halibut PSC allocated to the BSAI trawl limited access sector is projected to go unharvested. This rollover to the Amendment 80 cooperatives would be at the discretion of NMFS based on projected harvest rates in the BSAI trawl limited access sector and other criteria. Each Amendment 80 cooperative would receive an additional amount of CQ that is based on the proportion of the Amendment 80 QS held by that Amendment 80 cooperative compared to all other Amendment 80 cooperatives.

Fishery participants in a cooperative could consolidate fishing operations on a specific Amendment 80 vessel or subset of Amendment 80 vessels, thereby reducing monitoring and enforcement (M&E) and other operational costs, and harvest fish in a manner more likely to be economically efficient and less wasteful.

#### *8. Amendment 80 Limited Access Fishery*

Amendment 80 QS holders that choose not to join an Amendment 80 cooperative would be able to participate in the Amendment 80 limited access fishery. Amendment 80 would assign the Amendment 80 limited access fishery the amount of the Amendment 80 sector's allocation of Amendment 80 species ITAC and halibut and crab PSC that remains after allocation to all of the Amendment 80 cooperatives. Participants fishing in the Amendment 80 limited access fishery would continue to compete with each other; would not realize the same potential benefits from consolidation and

coordination; and would not receive an exclusive harvest privilege that accrues to members of an Amendment 80 cooperative.

#### *9. Use Caps*

The Council considered the effect of consolidation with the allocation of an excessive share of harvest privileges to Amendment 80 cooperatives. In response, Amendment 80 would implement use caps to limit the amount of Amendment 80 QS a person could hold, the amount of CQ they could use, and the amount of ITAC an Amendment 80 vessel could harvest. These use caps would moderate some of the potentially adverse effects of excessive consolidation of fishing operations on fishery participants, such as lost employment opportunities for fishing crew while providing economic efficiencies to Amendment 80 QS holders.

#### *10. Gulf of Alaska Sideboard Limits*

Catch limits, commonly known as sideboards, would limit the ability of Amendment 80 vessel operators to expand their harvest efforts in the Gulf of Alaska (GOA). Amendment 80 is designed to provide certain economic advantages to participants. Amendment 80 participants could use this economic advantage to increase their participation in other fisheries, primarily in the GOA fisheries, adversely affecting the participants in those fisheries. GOA groundfish and halibut PSC sideboards would limit the catch by Amendment 80 vessels to historic levels in the GOA.

#### *11. Economic Data Report (EDR)*

Amendment 80 would implement an economic data collection program to assess the impacts of Amendment 80 on various components of the fishery, including skippers and crew. Amendment 80 would establish a process for collecting and reviewing economic data generated under

Amendment 80 by requiring the annual submission of an EDR from each Amendment 80 QS holder.

Other management measures necessary to implement Amendment 80 would be provided in the proposed rule that accompanies Amendment 80. These measures include an expansion of the groundfish retention standard to all vessels in the Amendment 80 sector and monitoring and enforcement provisions necessary to support Amendment 80 and its implementing regulations.

Public comments are being solicited on proposed Amendment 80 through the end of the comment period stated (see **DATES**). A proposed rule to implement Amendment 80 will be published in the **Federal Register** for public comment, following NMFS' evaluation under MSA procedures. Public comments on the proposed rule must be received by the end of the comment period on Amendment 80 to be considered in the approval/disapproval decision on the amendment. All comments received by the end of the comment period on Amendment 80, whether specifically directed to the amendment or the proposed rule, will be considered in the decision to approve, partially approve, or disapprove the proposed amendment. Comments received after the comment period for the amendment will not be considered in that decision. To be considered, written comments must be received by NMFS, not just postmarked or otherwise transmitted, by the close of business on the last day of the comment period.

**Authority:** 16 U.S.C. 773 *et seq.*; 1540(f); 1801 *et seq.*; 1851 note; 3631 *et seq.*

Dated: April 24, 2007.

**James P. Burgess**

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