

Issued in Washington, DC on March 6, 1996.

Donald M. Itzkoff,
Deputy Administrator.

FHWA

List of Subjects in 49 CFR Part 382

Alcohol and drug abuse, Highway safety, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the FHWA proposes to amend 49 CFR part 382, as follows:

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

1. The authority for part 382 would continue to read as follows:

Authority: 49 U.S.C. 31306; 49 U.S.C. app. 31201 et. seq.; 49 U.S.C. 31502; 49 CFR 1.48.

§ 382.107 [Amended]

2. In § 382.107, the definition of "Substance abuse professional" is proposed to be removed.

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Rodney Slater,
Administrator, Federal Highway Administration.

FTA

List of Subjects

49 CFR Part 653

Drug testing, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 654

Alcohol testing, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set out in the preamble, the Federal Transit Administration proposes to amend 49 CFR Parts 653 and 654, as follows:

PART 653—PREVENTION OF PROHIBITED DRUG USE IN TRANSIT OPERATIONS

1. The authority for Part 653 would continue to read as follows:

Authority: 49 U.S.C. 5331; 49 CFR 1.51.

§ 653.7 [Amended]

2. In § 653.7, the definition of "Substance abuse professional" is proposed to be removed.

PART 654—PREVENTION OF ALCOHOL MISUSE IN TRANSIT OPERATIONS

1. The authority for Part 654 would continue to read as follows:

Authority: 49 U.S.C. 5331; 49 CFR 1.51.

§ 654.7 [Amended]

2. In § 654.7, the definition of "Substance abuse professional" is proposed to be removed.

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Gordon J. Linton,
Administrator, Federal Transit Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 960228053-6053-01; I.D. 022296E]

RIN 0648-A156

Groundfish of the Gulf of Alaska; Pollock Seasonal Allowances

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations that would implement Amendment 45 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). This amendment proposes to allow NMFS to combine by regulatory amendment the third and fourth quarterly allowances for pollock in the Western and Central (W/C) Regulatory Areas into single seasonal allowances that would become available October 1 of each fishing year in the Western Regulatory Area and September 1 of each fishing year in the Central Regulatory Area. Changes to the final 1996 harvest specifications of GOA pollock are also proposed to reflect the proposed revised seasonal allowances. These measures are necessary to address management problems that have been identified by the fishing industry. They are intended to further the management objectives of the FMP.

DATES: Comments must be received by April 22, 1996.

ADDRESSES: Comments should be sent to Ronald J. Berg, Chief, Fisheries

Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802-1668; Attn: Lori Gravel. Copies of Amendment 45 and the Environmental Assessment/Regulatory Impact Review (RIR) prepared for this Amendment 45 may be obtained from the North Pacific Fishery Management Council above address.

FOR FURTHER INFORMATION CONTACT: Kent Lind (907) 586-7228.

SUPPLEMENTARY INFORMATION:

The pollock fishery in the exclusive economic zone of the GOA is managed by NMFS under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations found at 50 CFR 672. General regulations governing U.S. fisheries are also found at 50 CFR 620.

Background

This action proposes regulations to implement Amendment 45 to the FMP. If approved by NMFS, this amendment would remove the requirement that the total allowable catch (TAC) specified for pollock in the W/C Regulatory Areas be divided into four equal quarterly allowances and replace it with more flexible language that would require that the TACs specified for pollock in the W/C Regulatory Areas be divided into seasonal, rather than quarterly, allowances. The size, number, and timing of seasonal allowances would be established in regulation. The Council's objective in adopting Amendment 45 was to allow NMFS to combine by regulatory amendment the third and fourth quarterly allowances for pollock in the W/C Regulatory Areas into single seasonal allowances that would become available October 1 of each fishing year in the Western Regulatory Area and September 1 of each fishing year in the Central Regulatory Area.

Since 1990, the TACs specified for pollock in the W/C Regulatory Areas have been divided into four equal quarterly allowances, which become available January 1, June 1, July 1, and October 1. The quarterly allowance system was implemented as part of Amendment 19 to the FMP to limit excessive harvests of roe-bearing pollock. At the time, the Council also believed that a quarterly allowance system would provide a more stable year-round pollock fishery for GOA-based vessels and processors.

In November 1990, NMFS listed the Steller sea lion as threatened under the Endangered Species Act (ESA) and subsequently approved Amendment 25

to the FMP, which contained a variety of Steller sea lion protection measures. Amendment 25 further subdivided the annual TAC specified for pollock in the W/C Regulatory Area into three management districts (Statistical Areas 610, 620, and 630). This action was implemented to avoid a concentration of fishing effort in time and/or space that could cause localized depletions of Steller sea lion prey and exacerbate the decline of Steller sea lions. The effect of Amendment 25 was to divide the TACs specified for pollock in the W/C Regulatory Areas into 12 individual allowances (four quarterly openings in each of the three management districts)

Regulations implementing the quarterly allowance system established by Amendments 19 and 25 are found at 50 CFR 672.20(a)(2)(iv). These regulations also specify that within any fishing year, shortfalls in one quarterly allowance be proportionately added to subsequent quarterly allowances resulting in a sum for each quarterly allowance not to exceed 150 percent of the original quarterly allowance; and that within any fishing year, harvests in excess of a quarterly allowance be deducted proportionately from subsequent quarterly allowances.

Problems With the Quarterly Allowance System

In August 1995, representatives of the GOA pollock industry submitted a proposal to the Council that would combine the third and fourth quarterly allowances of pollock TAC into a single seasonal allowance. Under this industry proposal, the first and second quarterly allowances would remain unchanged; 25 percent of the TAC on January 1 and 25 percent of the TAC on June 1. However, the third and fourth quarterly allowances would be combined into a single seasonal allowance of 50 percent of the TAC released on September 1, rather than the current quarterly releases of 25 percent on July 1 and October 1.

In response to this proposal, representatives of the inshore sector of the Bering Sea pollock fishery requested that the opening date for the combined third and fourth quarter allowance be delayed until October 1 so that Bering Sea-based vessels would have time to finish the Bering Sea non-roe pollock fishery before the start of the final pollock season in the W/C Regulatory Areas. In 1995, the Bering Sea non-roe pollock season closed on September 23.

Industry and NMFS are in agreement that several problems exist with the current quarterly allowance system for pollock in the W/C Regulatory Area. The first problem is with chum salmon

bycatch. Since 1991, chum salmon bycatch has been approximately 500 percent higher during the third quarter pollock opening than any other quarter. In 1993, an estimated 59,000 chum salmon were taken during the third quarter, and in 1995 an estimated 46,000 chum salmon were taken during the third quarter pollock fishery. Delaying release of the third quarter allowance until at least September, after chum salmon spawning periods have passed, is expected to reduce chum salmon bycatch rates in the pollock fishery.

A second problem identified by industry is that the current third quarter pollock fishery conflicts with summer salmon processing activities. During July, many GOA processors operate at near or full capacity processing salmon. Delaying the July pollock opening until at least September would allow processors to avoid scheduling conflicts with salmon processing, maintain more stable production levels and, maintain a more stable workforce. Processors currently report difficulties in maintaining a workforce during September when fewer fish are typically available, yet they need crews on hand in order to be ready in October when bottom trawling reopens for groundfish. A pollock opening in September or October would allow processors to more easily span the gap between summer salmon fisheries and October bottom trawl fisheries.

A third concern raised by both management agencies and industry is that declining pollock stocks and escalating fishing effort have made the GOA pollock fishery increasingly difficult to manage, especially during the fourth quarter. The 1995 fourth quarter pollock season is a case in point. Based on anticipated fishing effort, 1995 fourth quarter pollock openings were set at 12 hours in Statistical Area 610, 24 hours in Statistical Area 620, and 3 days in Statistical Area 630. Nevertheless, substantial overharvest occurred in Statistical Area 630 due to greater than anticipated fishing effort from vessels crossing over from the Bering Sea and western GOA. This management problem is most acute during the fourth quarter for two reasons. First, TAC allowances are frequently reduced in the fourth quarter to adjust for overharvest of TACs during the other three quarters. Second, effort is usually highest in the fourth quarter since vessels based in the Bering Sea enter the W/C Regulatory Area for the fourth quarter pollock fishery after the September closure of the non-roe season pollock fishery in the Bering Sea.

Finally, some participants in the GOA pollock fishery have requested the Council maintain concurrent GOA and Bering Sea pollock seasons to discourage the Bering Sea-based fleet from participating in GOA pollock openings. In 1995, the inshore component pollock non-roe season in the Bering Sea opened on August 15 and closed on September 23, 1 week before the fourth quarter opening in the W/C Regulatory Areas. As a result, operators of inshore vessels based in the Bering Sea had both opportunity and incentive to crossover to the W/C Regulatory Area to participate in the fourth quarter (October 1) opening since they were idled with their crews available. This additional fishing effort exacerbated efforts to manage small pollock TACs in the W/C Regulatory Areas and led to substantial overharvest in Statistical Area 630.

At its January 1996 meeting, the Council considered three opening date options for a combined third and fourth quarter allowance; September 1, September 15, and October 1. At this meeting, a coalition of Bering Sea and central Gulf-based processors and vessels submitted a compromise proposal to the Council that would establish an October 1 opening date for the Western Gulf Regulatory Area and a September 1 opening date for the Central Gulf Regulatory Area. Western Gulf-based processors and fishermen expressed dissatisfaction with the compromise proposal because an October 1 opening date in the Western Regulatory Area would facilitate entry by Bering Sea-based vessels.

However, the Council subsequently recommended that NMFS implement this compromise proposal as the preferred option. The Council believed that an October 1 opening date for the Western Regulatory Area and a September 1 opening date for the Central Regulatory Area would achieve the objectives outlined above while causing the least amount of dislocation for current participants in the fishery.

Regulatory Changes Proposed By This Action

This action would combine the third and fourth quarterly allowances in the W/C Regulatory Areas into single seasonal allowances equal to 50 percent of the specified TACs. These combined allowances would open October 1 in the Western Regulatory Area and September 1 in the Central Regulatory Area. This action would retain the requirement that, within any fishing year, shortfalls in the harvest of one seasonal allowance be proportionately added to subsequent seasonal allowances resulting in a sum

for each seasonal allowance not to exceed 150 percent of the original seasonal allowance; and the requirement that, within any fishing year, harvests in excess of a seasonal allowance be deducted proportionately from subsequent seasonal allowances of the same fishing year.

Proposed Changes to 1996 Harvest Specifications

Final 1996 harvest specifications for GOA pollock were published in the Federal Register on February 5, 1996 (61 FR 4304). The proposed change from quarterly allowances to three seasonal allowances of pollock TAC amounts specified for the W/C Regulatory Areas would require that the final 1996 specifications be amended. First, footnote 2 to Table 1 would be revised to read as follows:

“Pollock is apportioned to three statistical areas in the combined Western/Central Regulatory Area, each of which is further divided into three seasonal allowances (Table 3). In the Eastern Regulatory Area, pollock is not divided into seasonal allowances.”

Second, page 4308 of the final 1996 specifications, section 4, “Apportionments of Pollock TAC Among Regulatory Areas, Season, and

Between Inshore and Offshore Components,” and Table 3 would be amended to reflect the proposed seasonal allowances of pollock:

4. Apportionments of Pollock TAC Among Regulatory Areas, Seasons, and Between Inshore and Offshore Components

In the GOA, pollock is apportioned by area, season, and inshore/offshore components. Regulations at § 672.20(a)(2)(iv) require that the TAC for pollock in the combined W/C GOA be apportioned among statistical areas; Shumagin (61), Chirikof (62), and Kodiak (63) in proportion to known distributions of the pollock biomass. This measure was intended to provide spatial distribution of the pollock harvest as a sea lion protection measure. Each statistical area apportionment would be further divided into three seasonal allowances (Table 3). In the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

Within any fishing year, any unharvested amount of any seasonal allowance of pollock TAC would be added in equal proportions to the subsequent seasonal allowances, resulting in a sum for each seasonal allowance that does not exceed 150 percent of the original seasonal allowance. Similarly, harvests in excess of a seasonal allowance of TAC would be deducted in equal proportions from the remaining seasonal allowances of that fishing year. Directed fishing for pollock in the Western Regulatory Area (Statistical

Area 610) would be authorized in seasonal allowances beginning on January 1, June 1, and October 1. Directed fishing for pollock in the Central Regulatory Area (Statistical Areas 620 and 630) would be authorized in seasonal allowances beginning on January 1, June 1, and September 1. The Eastern Regulatory Area pollock TAC of 2,810 metric tons (mt) is not allocated among smaller areas or seasonal allowances.

Regulations at § 672.20(a)(2)(v)(A) require that the domestic annual processing (DAP) apportionment for pollock in all regulatory areas and all seasonal allowances thereof be divided into inshore and offshore components. One hundred percent of the pollock DAP in each regulatory area is apportioned to the inshore component after subtraction of amounts that are determined by the Director, Alaska Region, NMFS (Regional Director) to be necessary to support the bycatch needs of the offshore component in directed fisheries for other groundfish species. The amount of pollock available for harvest by vessels in the offshore component is that amount actually taken as bycatch during directed fishing for groundfish species other than pollock, up to the maximum retainable bycatch amounts allowed under regulations at § 672.20(g).

Third, Table 3 of the final 1996 specifications would be amended as follows to reflect the proposed seasonal allowances of pollock:

TABLE 3.—DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA (W/C GOA).

[ABC for the W/C GOA is 52,000 mt. Biomass distribution is based on 1993 survey data. TACs are equal to ABC. Inshore and offshore allocations of pollock are not shown. ABCs and TACs are rounded to the nearest 10 mt.]

| Statistical area | Biomass percent | 1996 TAC | Seasonal allowances ¹ | | |
|---------------------|-----------------|----------|----------------------------------|--------|--------|
| | | | First | Second | Third |
| Shumagin (61) | 49.0 | 25,480 | 6,370 | 6,370 | 12,740 |
| Chirikof (62) | 24.7 | 12,840 | 3,210 | 3,210 | 6,420 |
| Kodiak (63) | 26.3 | 13,680 | 3,420 | 3,420 | 6,840 |
| Total | 100.0 | 52,000 | 13,000 | 13,000 | 26,000 |

¹ As established under paragraphs (e) and (f) § 672.23, the first and second seasonal allowances of W/C pollock TAC amounts are available January 1 and June 1, respectively. The third seasonal allowance specified for statistical area 61 would become available October 1 and the third seasonal allowance specified for statistical areas 62 and 63 would become available September 1.

Classification

Section 304(a)(1)(D) of the Magnuson Act requires that regulations proposed by a Council be published within 15 days of receipt of the FMP amendment and regulations. At this time NMFS has not determined that Amendment 45 to the FMP that this rule would implement is consistent with the national standards, other provisions of the Magnuson 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 the purposes of E.O 12866.

An RIR was prepared for this proposed rule that describes the management background, the purpose and need for action, the management action alternatives, and the social impacts of the alternatives. The RIR also estimates the total number of small entities affected by this action and analyzes the economic impact on those small entities. Copies of the RIR can be obtained from the Council (see ADDRESSES).

The analysis in the RIR shows that the economic effects of this proposed rule to the regulated community would be positive and relatively minor. Accordingly, 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 that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

The section 7 consultations for the 1996 GOA and BSAI TAC specifications have evaluated the potential for adverse effects to ESA listed species including Steller sea lions, Snake River salmon, and seabirds. An additional informal consultation to specifically evaluate the effects of Amendment 45 on Steller sea lions was concluded on February 16, 1996. As a result of these consultations, the Director, Alaska Region, NMFS

determined fishing activities under this rule are unlikely to adversely affect endangered or threatened species.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Dated: March 5, 1996.

Richard H. Schaefer, Acting Program Manager Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 672 is proposed to be amended as follows:

PART 672—GROUND FISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801, *et seq.*

General Amendments

2. In § 672.20, paragraph (a)(2)(iv); the first sentence of paragraph (a)(2)(v)(A); and paragraph (c)(2) are revised to read as follows:

§ 672.20 General limitations.

- (a) * * *
- (2) * * *

(iv) The TAC for pollock in the combined Western and Central Regulatory Areas will be apportioned among Statistical Areas 610, 620, and 630 in proportion to the distribution of the pollock biomass as determined by the most recent NMFS surveys. Each apportionment will be divided into three seasonal allowances of 25 percent, 25 percent and 50 percent of the apportionment, respectively, corresponding to the three fishing seasons defined at paragraphs (c) and (f) of § 672.23. Within any fishing year, any unharvested amount of any seasonal allowance will be added proportionately to all subsequent seasonal allowances, resulting in a sum for each allowance not to exceed 150 percent of the initial seasonal allowance. Within any fishing year, harvests in excess of a seasonal allowance will be deducted proportionately from all subsequent seasonal allowances.

(v) * * * (A) The DAP apportionment of pollock in all regulatory areas will be allocated entirely to vessels catching pollock for processing by the inshore component after subtraction of an amount that is projected by the Regional Director to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. * * *

- * * * *
- (c) * * *

(2)—(i) *Applicable after December 31, 1998.* If the Regional Director determines that the amount of a target species or “other species” category apportioned to a fishery is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. The amount of a species or species group apportioned to a fishery is the amount identified in the notice of specifications as provided in paragraph (c)(1) of this section as these amounts are revised by inseason adjustments, for that species or species group, as identified by regulatory area or district and as further identified according to any allocation of total allowable level of fishing level (TALFF), the apportionment for joint venture processing (JVP), the apportionment for DAP, the seasonal allowance of pollock and, if applicable, as further identified by gear type. In establishing a directed fishing allowance, the Regional Director shall consider the amount of that species or species group or seasonal allowance of pollock that will be taken as incidental catch in directed fishing for other species in the same regulatory area or district. If the Regional Director establishes a directed fishing allowance and that allowance is or will be reached before the end of the fishing year or, with respect to pollock, before the end of the season, NMFS will prohibit directed fishing for that species or species group in the specified regulatory area or district. If directed fishing for a species or species group is prohibited, any amount of that species or species group greater than the maximum retainable bycatch amount, as calculated under paragraph (g) of this section, may not be retained and must be treated as a prohibited species under paragraph (e) of this section.

(ii) *Applicable through December 31, 1998.* If the Regional Director determines that the amount of a target species or “other species” category apportioned to a fishery is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. The amount of a species or species group apportioned to a fishery is the amount identified in the notice of specifications as provided in paragraph (c)(1) of this section. These amounts are revised by inseason adjustments, for a given species or species group, as identified by regulatory area or district, and as further identified according to any allocation of TALFF, the apportionment for JVP, the apportionment for DAP, the seasonal allowance of pollock or, with respect to Pacific cod, to an allocation

to the inshore or offshore component and, if applicable, as further identified by gear type. In establishing a directed fishing allowance, the Regional Director should consider the amount of that species group, seasonal allowance of pollock, or allocation of Pacific cod to the inshore or offshore component that will be taken as incidental catch in directed fishing for other species in the same regulatory area or district. If the Regional Director establishes a directed fishing allowance and that allowance is or will be reached before the end of the fishing year or, with respect to pollock, before the end of the season, NMFS will prohibit directed fishing for the species or species group in the specified regulatory area or district. If directed fishing for a species or species group is prohibited, any amount of that species or species group greater than the maximum retainable bycatch amount, as calculated under paragraph (g) of this section, may not be retained and must be treated as a prohibited species under paragraph (e) of this section.

* * * * *

3. In § 672.23, paragraph (e) is revised and paragraph (f) is added to read as follows:

§ 672.23 Seasons.

* * * * *

(e) Subject to other provisions of this part, directed fishing for pollock in the Western Regulatory Area of the Gulf of Alaska is authorized in three seasons:

- (1) From 0:01 a.m., A.l.t., January 1 through 12 noon, A.l.t., April 1; (2) from 12 noon, A.l.t., June 1 through 12 noon, A.l.t., July 1; and (3) from 12 noon, A.l.t., October 1 through 12 midnight A.l.t., December 31.

(f) Subject to other provisions of this part, directed fishing for pollock in the Central Regulatory Area of the Gulf of Alaska is authorized in three seasons:

- (1) From 0:01 a.m., A.l.t., January 1 through 12 noon, A.l.t., April 1; (2) from 12 noon, A.l.t., June 1 through 12 noon, A.l.t., July 1; and (3) from 12 noon, A.l.t., September 1 through 12 midnight A.l.t., December 31.

Nomenclature Amendments

§ 672.20 [Amended]

4. In addition to the amendments set out above, in § 672.20, in paragraph (c)(1), remove all occurrences of the word “quarterly” and add in their place the word “seasonal”.

[FR Doc. 96-5744 Filed 3-7-96; 11:37 am]