



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