

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 980331079-8144-09; I.D. 031198D]

RIN 0648-AK71

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Gulf of Alaska; Seasonal Apportionments of Pollock

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to change the seasonal apportionment of the pollock total allowable catch amount (TAC) in the combined Western and Central (W/C) Regulatory Areas of the Gulf of Alaska (GOA) by moving 10 percent of the TAC from the third fishing season, which starts on September 1, to the second fishing season, which starts on June 1. This seasonal TAC shift is a precautionary measure intended to reduce the potential impacts on Steller sea lions of pollock fishing under an increased 1998 TAC by reducing the percentage of the pollock TAC that is available to the commercial fishery during the fall and winter months, a period that is critical to Steller sea lions. This action is intended to promote the conservation and management objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: Effective June 10, 1998.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for this action may be obtained from the Sustainable Fisheries Division, NMFS-Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907-586-7228 or kent.lind@noaa.gov

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone of the GOA are managed by NMFS under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing the groundfish fisheries of the GOA appear at 50 CFR parts 600 and 679.

Current groundfish regulations apportion the pollock TAC in the W/C

Regulatory Areas among three statistical areas—610 (Shumagin), 620 (Chirikof), and 630 (Kodiak)—and divide the TAC apportioned to each statistical area into three seasonal allowances of 25 percent, 25 percent, and 50 percent of the TAC, which become available on January 1, June 1, and September 1, respectively. This final rule shifts 10 percent of the TAC from the third to the second season, resulting in seasonal allowances of 25 percent, 35 percent, and 40 percent, respectively.

The proposed rule for this action was published in the **Federal Register** on April 30, 1998 (63 FR 23712). The proposed rule described the Council's decision making process in recommending a 60-percent increase in the 1998 pollock TAC for the W/C Regulatory Areas, the current status of Steller sea lions in the W/C Regulatory Areas, previous management actions taken to protect Steller sea lions in the W/C Regulatory Areas, and current concerns related to the potential for increased pollock fishing in the third season to impact Steller sea lions. Additional information on this action is contained in the preamble to the proposed rule (63 FR 23712, April 30, 1998) and in the EA/RIR (see ADDRESSES).

Comments and Responses

Comments on the proposed rule were invited through May 15, 1998. Two letters of comment were received on the proposed rule by the end of the comment period and are summarized and responded to in the 5 comments below. No changes were made from the proposed rule in response to comments.

Comment 1: NMFS failed to follow the precautionary principle by allowing the Council to increase the 1998 pollock TAC by 60 percent. The precautionary principle should clearly direct managers to minimize human exploitation of the Steller sea lion's prey base. Instead, the Council has substantially increased the allowable exploitation level of a major component of the Steller sea lion's prey base and NMFS has apparently offered no opposition to this decision. This is unacceptable.

Response: Estimated pollock biomass is one of the principal factors used to set the TAC for pollock in the W/C Regulatory Areas. As biomass changes, either up or down, so changes the TAC. In 1998, the estimated biomass of pollock in the W/C Regulatory Areas was bolstered considerably by a very strong 1994 year class. The Council recommended a TAC increase from the previous year to allow an increase in fishing consistent with the estimated biomass. NMFS approved the 1998

pollock TAC for the W/C Regulatory Areas as part of the final 1998 specifications for groundfish of the GOA (63 FR 12027, March 12, 1998). The 1998 TAC will result in increased removal of pollock from the W/C Regulatory Areas but is based on the fact that the biomass of pollock in those areas has also increased. The information available indicates that the unfished pollock biomass will be greater in 1998 than in 1997 despite the higher TAC.

This final rule reapportions 10 percent of the TAC from the third to the second fishing season to reduce the percentage of pollock TAC that is available to the commercial fishery during the fall and winter months, a period that is critical to Steller sea lions. NMFS believes the 1998 pollock fishery in the W/C Regulatory Areas will be managed in a manner that will not jeopardize the continued existence of Steller sea lions.

Comment 2: NMFS should reconsider its conclusions from its Section 7 consultation on the 1998 TAC. NMFS should insist that the Council reduce the approved TAC increase (or eliminate it altogether) due to the many potential adverse consequences it could have on the endangered Steller sea lion population. NMFS should continue to oppose TAC increases for pollock into the foreseeable future, at least until the western population of Steller sea lions shows some sign of recovery.

Response: NMFS stands by the conclusions of the Section 7 consultation made on the 1998 pollock TAC specified for the W/C Regulatory Areas. As noted above, the 1998 TAC increase was supported by increased biomass estimates. Even with an increase in fishery removals, the unfished pollock biomass available to Steller sea lions will be greater in 1998 than in 1997.

Comment 3: We (a marine mammal research consortium) conduct research on Steller sea lions and were surprised to learn that the leading hypothesis explaining their decline is "lack of available prey." This implies that Steller sea lions are starving to death; a statement not supported by field observations. The hypothesis that most researchers are working with is that a high mortality of young is occurring, but the possible causes are not known. The problem does not appear to be a lack of "available" prey, but rather, a lack of "appropriate" prey. "Appropriate" prey include small schooling fish, such as herring, which are higher in energy content. The prey that sea lions are consuming in areas of sharp population decline are poor in energy or nutritional

content. For example, pollock has about half the energy content of herring. Studies with captive sea lions at the Vancouver Aquarium have demonstrated that the difference in usable energy (due to various costs of digestion) is even greater. From an energetic viewpoint, sea lions can survive on a pollock only diet. However, the level of prey intake would have to be increased, perhaps to a level surpassing physiological and ecological limitations. Sea lions in the areas of stable populations incorporate a higher proportion of small schooling fish (such as herring) in their diet while sea lions from declining populations rely heavily upon pollock as their primary prey item.

Response: Although pollock generally have lower mean energy levels than some small forage fishes, the range of energy levels does overlap. In addition, during January through March, pollock are in breeding condition and are likely to contain greater energy content at that time. Nevertheless, if other forage fish species were available in sufficient abundance, then it is likely that sea lions would prey on them to a greater extent. Indeed, NMFS recently issued a final rule to prohibit directed fishing on all forage fish species in Federal waters off Alaska, in part, to protect the availability of these prey species for Steller sea lions (63 FR 13009, March 17, 1998). However, sea lions are limited to available prey, regardless of whether that prey is appropriate, and simply put, they consume pollock. If pollock has less energy and nutrient content, then sea lions would have to increase the amount of pollock taken to satisfy their nutritional needs. The hypothesis of lack of available prey is supported by size differences observed in sea lions in the 1970s and 1980s, by evidence of lower productivity, and by evidence of decreased juvenile survival.

Comment 4: Decreasing total prey biomass by increasing pollock catches

has the potential to negatively impact Steller sea lion populations, but it also has the potential to positively impact Steller sea lions. Unfortunately, despite NMFS assertions, the effects of increased pollock catches on overall prey abundance and diversity are not known. Shifting the biomass of pollock from older to younger age classes should result in more prey for Steller sea lions, not less. Steller sea lions tend to feed on small pollock while the commercial fishery targets older and larger fish. Similarly, an increase in the catch of adult pollock might increase juvenile pollock abundance (the preferred prey size for Steller sea lions) by reducing cannibalism; or more ideally for Steller sea lions, reducing pollock biomass might increase the abundance of other prey types, particularly small schooling fish. Unfortunately, we do not know the outcome of fishing down pollock is not known, and the scientific ability to make such predictions does not exist.

Response: NMFS shares the commenter's concern regarding the hypothesis that increased fishing could result in a shift in prey composition. If the composition of prey can be shifted by increased fishing, then it is also possible that the current prey composition, which is dominated by pollock, reflects the effects of past fishing. If that is the case, then the suggestion that increased fishing of pollock would return ecosystem composition to something more favorable to Steller sea lions implies a reversal of effect, which is possible but questionable. As the comment notes, we do not know the outcome of fishing down pollock and do not yet have the scientific ability to make such predictions. From a precautionary perspective, it seems prudent to minimize the degree to which commonly used prey species, such as pollock, are locally depleted. Depletion

can be minimized by dispersing fishing effort more evenly over time.

Comment 5: Moving part of the pollock fishery to summer may result in greater hardship to lactating females that leave their pups to search for food.

Response: The current 25/25/50 apportionment of pollock TAC among the three fishing seasons has the greatest potential effect on the fall months, when data indicate that pups are beginning to wean. Shifting 10 percent of the TAC to the summer season increases the catch during the summer period when females are still nursing and decreases the TAC during the period when females are either still nursing or weaning has begun and pups are attempting to forage for themselves. To date, no evidence suggests that females and pups are compromised during the summer breeding season. One study indicates that pups in the western population, where the greatest decline has occurred, are even larger during the breeding season than pups in the eastern population. This indicates that nutritional stress occurs late in the fall and winter months when pups are learning to forage on their own.

The shift of 10 percent of the TAC was a precautionary measure to ensure that pups learning to forage were not compromised by the relatively larger catch in the fall/winter period. For pups and adult females, winter months are considered the most difficult months due to harsher environmental conditions, greater prey dispersal, and increased metabolic and energetic requirements.

Amendment to Final 1998 Pollock TAC Specifications for the W/C Regulatory Areas

To implement the final rule in 1998, this action also amends Table 3 of the 1998 final harvest specifications for groundfish of the GOA (63 FR 12027, March 12, 1998). Table 3 of the 1998 specifications is revised as follows:

TABLE 3.—DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA (W/C GOA); BIOMASS DISTRIBUTION, AREA APPORTIONMENTS, AND SEASONAL ALLOWANCES. ABC FOR THE W/C GOA IS 119,150 METRIC TONS (MT). BIOMASS DISTRIBUTION IS BASED ON 1996 SURVEY DATA. TACS ARE EQUAL TO ABC. INSHORE AND OFFSHORE ALLOCATIONS OF POLLOCK ARE NOT SHOWN. ABCS AND TACS ARE ROUNDED TO THE NEAREST 5 MT.

Statistical area	Biomass percent	1998 ABC = TAC	Seasonal allowances		
			First	Second	Third
			metric ton		
Shumagin (610)	25	29,790	7,450	10,430	11,910
Chirikof (620)	42	50,045	12,510	17,515	20,020
Kodiak (630)	33	39,315	9,830	13,760	15,725
Total	100	119,150	29,790	41,705	47,655

Classification

This action amends final 1998 harvest specifications for the W/C Regulatory Areas by shifting 10 percent of the TAC from the third fishing season beginning September 1 to the second fishing season beginning June 1. A 30-day delayed effectiveness period for this action would result in unnecessary closures and disruption within the fishing industry because the second pollock season in the W/C Regulatory Areas would be opened and closed on the old TACs and then would have to be reopened again once this action becomes effective and the additional 10 percent TAC amount becomes available. Such a closure and reopening of the fishery would impose unnecessary costs on industry because fishing vessels and processors would be forced to stop and restart their operations and would incur the costs of maintaining crews during the down time. Waiver of the 30-day delayed effectiveness for this action would allow the second season pollock fisheries to continue uninterrupted. In addition, this action does not significantly revise management measures in a manner that would require time to plan or prepare for those revisions. For these reasons, the immediate effectiveness of this action is required to provide consistent management and conservation of fishery resources and to give the fishing industry the earliest possible opportunity to plan its fishing operations. Accordingly, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), finds that good cause exists to waive the 30-day delayed effectiveness period for this action under 5 U.S.C. 553(d)(3).

This final 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 that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

A formal section 7 consultation under the Endangered Species Act was initiated for the 1998 final specifications for groundfish of the GOA. In a Biological Opinion dated March 2, 1998, NMFS described the effects of this action as follows:

The proposed action is to conduct the Gulf of Alaska pollock fishery in 1998 with a 119,150 mt TAC divided among three seasons starting January 20, June 1, and September 1. Final specifications for the fishery will indicate a 25 percent, 25 percent, 50 percent TAC distribution for the three seasons, but the June 1 and September 1 TAC levels will be revised through rulemaking to a distribution of 35 percent and 40 percent for the last two seasons. This reapportionment will reduce the catch in the season beginning September 1 and shorten the duration of this season's pollock fishery. This measure will, therefore, minimize potential adverse effects of the fishery on Steller sea lions during the winter months, when weaned pups are learning to forage and adult females may be both pregnant and lactating.

In the Biological Opinion, the Assistant Administrator determined that fishing activities conducted under this final rule are not likely to jeopardize the

continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: June 5, 1998.

Rolland A. Schmittin,

*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 part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.20, paragraph (a)(5)(ii)(B) is revised to read as follows:

§ 679.20 General limitations.

(a) * * *

(5) * * *

(ii) * * *

(B) *Seasonal allowances.* Each apportionment will be divided into three seasonal allowances of 25 percent, 35 percent, and 40 percent of the apportionment, respectively, corresponding to the three fishing seasons defined at § 679.23(d)(2).

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