

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 980817221-8221-01; I.D. 072898A]

RIN 0648-AL22

**Fisheries of the Exclusive Economic Zone Off Alaska; Western Alaska Community Development Quota Program**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Amendment 45 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). Amendment 45 would reauthorize the allocation of 7.5 percent of the pollock total allowable catch (TAC) to the Western Alaska Community Development Quota (CDQ) Program. This proposed action is intended to further the objectives of the FMP.

**DATES:** Comments must be received by October 19, 1998.

**ADDRESSES:** Comments may be sent to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from the same address or by calling the Alaska Region, NMFS, at 907-586-7228.

**FOR FURTHER INFORMATION CONTACT:** Sally Bibb, 907-586-7228.

**SUPPLEMENTARY INFORMATION:****Management Background and Need for Action**

NMFS manages fishing for groundfish by U.S. vessels in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) according to the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S.

vessels appear at 50 CFR parts 600 and 679.

The Council has submitted Amendment 45 for Secretarial review. NMFS published a Notice of Availability of the FMP amendment at 63 FR 41782 (August 5, 1998) and invited comments on the FMP amendment through October 4, 1998. All written comments received by October 4, 1998, whether specifically directed to the FMP amendment, the proposed rule, or both, will be considered in the approval/disapproval decision on the FMP amendment.

The Council initially recommended the allocation of 7.5 percent of the BSAI pollock TAC to the CDQ Program as part of Amendment 18 to the FMP, which allocated pollock among catcher vessels delivering to the inshore and offshore processing sectors and the CDQ program for the period 1992 through 1995. The Council recommended Amendment 18 in 1991, and the Secretary approved it on March 4, 1992. NMFS published regulations implementing Amendment 18 in the **Federal Register** on June 3, 1992 (57 FR 23321) and October 7, 1992 (57 FR 46139). In June 1995, the Council recommended Amendment 38 to the FMP, which extended the inshore/offshore/CDQ allocation of pollock through December 31, 1998. The Secretary approved Amendment 38 on November 28, 1995, and NMFS published implementing regulations in the **Federal Register** on December 12, 1995 (60 FR 63654).

The 1996 amendments to section 305 of the Magnuson-Stevens Act require the Council and the Secretary to "establish a western Alaska community development quota program under which a percentage of the total allowable catch of any Bering Sea fishery is allocated to the program." While this sentence requires the Secretary to establish a single, stand-alone western Alaska CDQ program, it does not automatically extend the pollock CDQ allocation beyond the current expiration date of December 31, 1998. To continue the allocation of pollock to the CDQ program, the Council must recommend, and the Secretary must approve, an amendment to the FMP.

At its meeting in April 1998, the Council considered an initial EA/RIR/IRFA analyzing two alternatives. Alternative 1 (no action) would allow the pollock CDQ allocation to expire on December 31, 1998. Alternative 2 would permanently extend the 7.5 percent allocation of the pollock TAC to the CDQ program. The Council decided to no longer link the pollock CDQ allocation to the inshore/offshore

allocation of pollock, and to extend the allocation permanently.

The Council took final action on proposed Amendment 45 in June 1998, by selecting Alternative 2 as the preferred alternative. In making this decision, the Council considered the analysis of the economic impacts of the first 6 years of the pollock CDQ program in western Alaska. The information contained in, and the conclusions of, this analysis are summarized here.

The allocation of pollock TAC to the CDQ program from 1992 through 1998 has been instrumental in providing the revenues, employment, and training benefits to achieve the Council's goals for the CDQ program when it was initially established. These goals are to help western Alaska communities to develop and support commercial fishery activities that result in ongoing, regionally based commercial fisheries or related businesses. Six CDQ groups representing 56 western Alaska communities have earned over \$20 million per year from contracts with their industry partners that harvest the pollock CDQ quotas on behalf of the CDQ groups. Since 1993, the groups' net income has averaged 45 percent of revenues. The value of the CDQ groups' equity ownership in fishing vessels, on-shore development projects, loan portfolios, and Individual Fishing Quota holdings has increased an average of 37 percent per year since 1992, and totaled approximately \$64 million in 1997. Finally, the pollock CDQ allocations have led to training and employment opportunities for community residents. The EA/RIR/IRFA estimates that in 1997, over 200 people from CDQ communities were employed directly in the pollock harvesting and processing industry, and a total of about 1,200 CDQ program related jobs had been created. These jobs are in CDQ program management (6 percent of jobs), pollock harvesting and processing (27 percent), other fisheries harvesting and processing (50 percent), and other employment (17 percent). Additional details on development projects, revenues, investments, training, and employment due to the pollock CDQ program are in the EA/RIR/IRFA.

The Council also considered that not allocating pollock to the CDQ program would increase the amount of pollock available to the vessels and processors participating in the non-CDQ groundfish fisheries in the BSAI. However, the Council determined that the original goals of CDQ program were being met successfully and that the benefits provided to western Alaska communities justified continued

allocation of 7.5 percent of the pollock TAC to the CDQ Program.

This proposed rule would make the following changes in groundfish fishery regulations at 50 CFR part 679:

1. Revise § 679.20(b)(1)(iii) and remove paragraph (a) in § 679.31 so that the pollock CDQ reserve would no longer be specified separately from the other groundfish TAC species or species groups. The allocation of pollock and establishment of the pollock CDQ reserve would be conducted in the same manner as all other groundfish CDQ reserves (except fixed gear sablefish) that are established through an allocation of one half of the reserve (7.5 percent of the TAC) for that species or species group.

2. Renumber the paragraphs in § 679.31 to adjust for the removal of paragraph (a).

3. Revise the new paragraph (a) on the halibut CDQ reserves to change the phrase "specified in paragraph (b) of this section" to read "specified in this section."

4. Correct cross references in the definitions of "Halibut CDQ reserve", "PSQ allocation", and "PSQ species."

5. Revise the definitions for "Community Development Quota (CDQ)" and "CDQ reserve" so that they apply to any CDQ species (groundfish, halibut, or crab) rather than to groundfish CDQ only.

6. Rename the definition currently called "Sablefish CDQ reserve" to the "Fixed gear sablefish CDQ reserve" to more correctly identify this reserve.

7. Correct a cross reference to the newly renumbered CDQ reserves in the general CDQ regulations at § 679.30(a)(4).

#### Classification

At this time, NMFS has not determined that the FMP amendment this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an initial regulatory flexibility analysis that describes the impact this proposed rule, if adopted, would have on small entities. This preamble summarizes and supplements the Council's IRFA. The analysis estimates that the total universe of entities affected by regulations governing the BSAI pollock fishery is 249. Of these, 130 are small entities. The total universe is comprised of six CDQ groups, 56 western Alaska communities eligible for the CDQ program, five communities whose residents

participate in the BSAI pollock fisheries but are not eligible for the CDQ program, 140 catcher vessels using trawl gear, 31 catcher/processors using trawl gear, three motherships, and eight shoreside processing plants. The small entities are the six CDQ groups, the 56 western Alaska communities eligible for the CDQ program, four of the Alaskan communities whose residents participate in the BSAI pollock fisheries but are not eligible for the CDQ program, and 64 of the catcher vessels. This action would benefit the small entities that receive the pollock allocation, while having a negative impact on those that do not.

The 64 catcher vessels participating in the BSAI pollock fisheries would experience negative economic impacts in that 7.5 percent of the pollock TAC would not be available through the open access fishery. These boats might be able to fish for the pollock by entering contracts with the CDQ groups, but profits would be reduced by the cost of the contract. Thus, a 7.5 percent reduction in the pollock TAC may reduce the annual gross revenues of these vessel owners by more than 5 percent relative to the alternative of not allocating pollock to the CDQ program. The impact of the pollock CDQ allocation on the four Alaskan non-CDQ communities (Unalaska, Sand Point, King Cove, and Kodiak) is not known. Because the CDQ allocation results in a shift in who can catch a certain amount of pollock, to the extent that the non-CDQ communities would have had an opportunity to benefit from the open access pollock community, the CDQ allocation reduces that opportunity. While it is impossible to quantify the amount of loss to these communities, it is possible that losses would be significant. The 64 catcher vessels and four non-CDQ communities represent 52 percent of the small entities in the BSAI pollock fisheries.

NMFS data indicate that 7.5 percent of the pollock TAC yields an average of \$2 million in wages and \$10.2 million net income on annual revenues of nearly \$20 million to the CDQ groups. These direct benefits likely understate total economic benefits to the CDQ groups because they do not include the indirect benefits generated from the development projects undertaken by the program. These direct and indirect impacts generated by the program represent a differentially higher economic impact when compared with other regions of the State of Alaska and with the United States in general because of the relative absence of alternative economic bases in these communities.

The 64 independent catcher-boats appear to be the only small business entities participating in the BSAI pollock fishery. The allocation of 7.5 percent of the pollock TAC to the CDQ communities reduces the potential harvest by the 64 vessels and may reduce their annual gross revenues by more than 5 percent when comparing the 7.5 percent allocation alternative with the alternative that would not reauthorize the allocation and allow it to expire at the end of 1998. In addition to the 64 catcher boats, the four non-CDQ communities (Unalaska, Sand Point, King Cove, and Kodiak) could experience a significant loss in annual revenue because CDQ pollock may be processed at plants other than those used by vessels participating in the open access fisheries.

NMFS considered two alternatives that could have minimized economic impacts on the small entities negatively affected by this action. The first alternative would be to allocate 3.5 percent of pollock TAC to the CDQ reserve. Although this alternative would benefit the small entities not receiving CDQ allocation, the benefits accruing to the 56 CDQ communities would be considerably less. The alternatives that those communities have for generating income and investment are so small that the reduction from 7.5 percent to 3.5 percent reserve would be likely to produce significant negative economic impacts on these small entities. The trade off is clear; by reserving 3.5 percent instead of 7.5 percent, the catcher vessels gain at the expense of the CDQ communities. However, because of the relative absence of alternative economic bases in the CDQ communities, those communities will experience a relatively greater economic impact than would other regions of the State and the country in general.

The second alternative would be to let the present reserve of 7.5 percent of pollock TAC expire at the end of 1998. This action would result in a further shift of impacts from one set of small entities to another. It would benefit the non-CDQ participants in the fishery while cutting revenues of the CDQ groups.

Because the CDQ program is allocative by nature, any approved alternative will affect small entities. If the 7.5 percent allocation alternative were found to be inconsistent with the Magnuson-Stevens Act, NMFS could only disapprove it. Reconsideration of the 3.5 percent or other allocation alternatives by the Council and the public would be time consuming and disruptive to the ongoing CDQ program. Because this rule is an allocation from

one group of small entities to another, the Council weighed the economic and social effects and selected its preferred alternative as a legal alternative for achieving its statutory objective of allocating the TAC of pollock in the Bering Sea and Aleutian Islands fishery to the CDQ program.

A copy of the analysis is available from NMFS (See ADDRESSES).

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Recordkeeping and reporting requirements

Dated: August 28, 1998.

**Hilda Diaz-Soltero,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be 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 § 679.2 the definition for “Sablefish CDQ reserve” is removed; the definitions for “Community Development Quota (CDQ)”, “CDQ allocation”, “Halibut CDQ reserve”, “PSQ allocation”, and “PSQ species” are revised; and a new definition for “Fixed gear sablefish CDQ reserve” is added in alphabetical order to read as follows:

**§ 679.2 Definitions.**

\* \* \* \* \*

*CDQ allocation* means a percentage of a CDQ reserve specified under § 679.31 that is assigned to a CDQ group when NMFS approves a proposed CDP.

\* \* \* \* \*

*Community Development Quota (CDQ)* means the amount of a CDQ species established under § 679.31 that is allocated to the CDQ program.

\* \* \* \* \*

*Fixed gear sablefish CDQ reserve* means 20 percent of the sablefish fixed gear TAC for each subarea in the BSAI for which a sablefish TAC is specified under § 679.20(b)(iii)(B). See also § 679.31(b).

\* \* \* \* \*

*Halibut CDQ reserve* means the amount of the halibut catch limit for IPHC regulatory areas 4B, 4C, 4D, and 4E that is reserved for the halibut CDQ program under § 679.31(a).

\* \* \* \* \*

*PSQ allocation* means a percentage of a PSQ reserve specified under § 679.21(e)(1)(i) and (e)(2)(ii) that is assigned to a CDQ group when NMFS approves a proposed CDP. See also § 679.31(d).

*PSQ species* means any species that has been assigned to a PSQ reserve under § 679.21(e)(1)(i) and (e)(2)(ii) for purposes of the CDQ program. See also § 679.31(d).

\* \* \* \* \*

3. In § 679.20, paragraph (b)(1)(iii)(A) is revised to read as follows:

**§ 679.20 General limitations.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) *CDQ reserve*—(A) *Groundfish CDQ reserve*. One half of the nonspecified reserve established by paragraph (b)(1)(i) of this section is apportioned to the groundfish CDQ reserve.

\* \* \* \* \*

4. In § 679.30, paragraph (a)(4) is revised to read as follows:

**§ 679.30 General CDQ regulations.**

(a) \* \* \*

(4) *Request for CDQ and PSQ allocations*. A list of the percentage of each CDQ reserve and PSQ reserve, as described at § 679.31(a) through (d), that is being requested. The request for allocations of CDQ and PSQ must identify percentage allocations requested for CDQ fisheries identified by the primary target species of the fishery as defined by the qualified applicant and the gear types of the vessels that will be used to harvest the catch.

\* \* \* \* \*

5. In § 679.31, paragraph (a) is removed and paragraphs (b) through (g) are redesignated as paragraphs (a) through (f). The newly designated paragraph (a)(1) is revised to read as follows:

**§ 679.31 CDQ reserves.**

\* \* \* \* \*

(a) *Halibut CDQ reserve*. (1) NMFS will annually withhold from IFQ allocation the proportions of the halibut catch limit that are specified in this section for use as a CDQ reserve.

\* \* \* \* \*

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