

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

[Docket No. 981021264-8264-01; I.D. 092998A]

[RIN 0648-AL29]

**Fisheries of the Exclusive Economic Zone Off Alaska; Season and Area Apportionment of Atka Mackerel Total Allowable Catch**

**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 divide the Atka mackerel total allowable catch (TAC) specified for the Aleutian Islands Subarea into two seasonal allowances; reduce the percentage of Atka mackerel TAC taken from Steller sea lion critical habitat over a 4-year period in the Western and Central Districts of the Aleutian Islands Subarea; and extend the seaward 20 nautical miles (nm) no-trawl zone around the Seguum and Agligadak rookeries in the Eastern District of the Aleutian Islands into a year round closure. The purpose of this action is to avoid significant fishery-induced localized depletions of Atka mackerel, a primary prey species for Steller sea lions in the Aleutian Islands and to avoid potential jeopardy to the continued existence of Steller sea lion populations and their critical habitat through excessive removal of prey. This action is intended to further the conservation goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

**DATES:** Comments on the proposed rule must be received no later than December 9, 1998.

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

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

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI) pursuant to the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The FMP is implemented by regulations appearing at 50 CFR part 679 issued under the authority of the Magnuson-Stevens Act. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

**Purpose and Need for Action**

In 1990, NMFS designated the Steller sea lion (*Eumetopias jubatus*) as a threatened species under the Endangered Species Act of 1973 (ESA). The designation followed severe declines throughout much of the Gulf of Alaska and Aleutian Islands region. In 1993, NMFS defined critical habitat for the species to include the marine areas within 20 nm of major rookeries and haulouts of the species west of 144° W. long., as well as major foraging areas. In 1997, NMFS recognized two separate populations and reclassified the western population (west of 144° W. long.) as endangered. The estimated number of Steller sea lions in the western population has declined by more than 80 percent since the mid-1960s. The ultimate cause or causes of the decline are unknown, but lack of available prey is believed to be an important contributing factor.

NMFS is the lead agency responsible for the recovery and conservation of the Steller sea lion. As such, it has periodically consulted with itself on the FMP and on the potential effects of the various groundfish fisheries on Steller sea lions. Since listing the Steller sea lion as threatened in 1990, NMFS has expressed concern in three subsequent biological opinions (the products of ESA section 7 consultations) that fisheries may reduce sea lion foraging success by causing changes in prey composition, age/size composition of available prey species, or localized depletions of prey.

Atka mackerel are an important prey species for Steller sea lions. In a recent study, NMFS researchers found that Atka mackerel were the most common prey item (based on split-sample frequency of occurrence) for Steller sea lions in portions of the Central and Western Districts of the Aleutian Islands Subarea. These results were based on scats collected in summer months and assumed to be primarily from adult

females. Atka mackerel were also found in 84 percent of 241 Steller sea lion scats collected in 1989-92 in the Aleutian Islands (92 percent in the Central Aleutian Islands).

Recent statistical evaluations of catch per unit effort (CPUE) at various sites in the 1990s have indicated that the Atka mackerel fishery has led to localized depletions of Steller sea lion prey, thereby increasing evidence of competition. Thus, the first of two main objectives of this proposed rule is to modify the management of the Atka mackerel fishery to avoid such depletions.

The second objective is based on the statutory requirement of the ESA that Federal actions within the critical habitat of a listed species not jeopardize the continued existence of populations of those species or adversely modify their critical habitat. The single most important feature of critical habitat for the Steller sea lion is its prey base. Areas designated as critical habitat for this species must include sufficient food to meet the energetic demands of a stable and healthy sea lion population. Thus, the availability of prey in critical habitat is a matter of considerable concern, particularly because lack of available prey may have contributed to the decline of the western population or may be impeding its recovery.

Since 1977, the portion of Atka mackerel catch taken annually within Steller sea lion critical habitat has varied from 15 percent to 98 percent, with an average of 71 percent. A marked increase in the annual catch in the 1990s and the high percent of the catch generally taken within Steller sea lion critical habitat have resulted in a marked increase in the tonnage of Atka mackerel taken from areas considered essential to the recovery and conservation of the Steller sea lion, again increasing concerns that the fishery competes with Steller sea lions. The point at which fishery removals of prey from critical habitat jeopardize the continued existence of Steller sea lion populations or result in adverse modification of critical habitat is not clear. In spite of such uncertainty, the ESA requires that a judgment be made on the basis of the best available scientific and commercial data. To prevent potential jeopardy to the continued existence of Steller sea lion populations and adverse modification of their critical habitat, this proposed rule seeks to reduce the proportion of the annual Atka mackerel catch taken from within designated critical habitat.

The ultimate cause or causes of the decline of the western population of Steller sea lions remain uncertain.

However, NMFS believes that an important contributing factor may be the lack of available prey of which Atka mackerel are an important component. NMFS is responsible for ensuring that the Atka mackerel fishery does not jeopardize the continued existence of Steller sea lion populations or adversely modify their critical habitat. Given the apparent importance of Atka mackerel in the diet of Steller sea lions, particularly in the central and western Aleutian Islands, careful management of the Atka mackerel fishery is essential to ameliorate potential impacts of the fishery on Steller sea lions and their critical habitat.

At its June 1998 meeting, the Council considered this information and the analysis prepared by NMFS in support of this action and recommended that NMFS proceed with the development of regulations to reduce competition between the Atka mackerel fishery and Steller sea lions. Six alternatives were presented to the Council for consideration. The alternative adopted by the Council and set out in this proposed rule would (1) divide the Atka mackerel TACs specified for each subarea and district of the BSAI into two equal seasonal allowances, (2) reduce the percentage of Atka mackerel TAC taken from Steller sea lion critical habitat over a 4-year period in the Western and Central Districts of the Aleutian Islands Subarea, and (3) extend the seasonal 20 nm no-trawl zone around the Seguam and Agligadak rookeries in the Eastern District of the Aleutian Islands into a year-round closure.

#### Elements of the Proposed Rule

##### *Atka Mackerel Season Split*

To address the issue of localized depletions of Steller sea lion prey, this action would establish two Atka mackerel fishing seasons: The A season would run from 0001 hours, Alaska local time (A.l.t.), January 1 through 1200 hours, A.l.t., April 15 and the B season would run from 1200 hours, A.l.t., September 1 through 1200 hours, A.l.t., November 1. The TAC specified for the Atka mackerel fishery after subtraction of the jig gear allocation and reserves would be divided equally into A and B season allowances during the annual specification process. This split is proposed as an effective means to ameliorate concerns about localized depletion while still providing reasonable opportunity to the fishing industry to harvest Atka mackerel without significantly increased operational costs. The jig gear allocation and Community Development Quota

(CDQ) would not be divided into seasonal allowances because jig gear and CDQ fishing occur outside the time period of the open access trawl fishery, and the jig gear and CDQ fisheries are too small, widely dispersed, and slowly paced to lead to localized depletions of Atka mackerel.

##### *Progressive Reduction of Catch Within Critical Habitat*

This action would prohibit trawling for groundfish within areas designated as Steller sea lion critical habitat in the Western or Central Districts of the Aleutian Islands when NMFS determines that the harvest of a seasonal allowance of Atka mackerel within a district reaches the following percentage identified for each year and district:

Year	Western (543)	Central (542)
1999 .....	65	80
2000 .....	57	67
2001 .....	48	46
2002 and after .....	40	40

A critical habitat trawl closure within a district would remain in effect until NMFS closes Atka mackerel to directed fishing within the same district. Steller sea lion critical habitat areas in the Aleutian Islands are defined in Table 1, Table 2, and Figure 4 of 50 CFR part 226. The purpose of this action is to ensure that the percentage of Atka mackerel catch taken inside critical habitat does not exceed the percentages identified above. CDQ groups would be limited to the same percentages of Atka mackerel catch taken inside critical habitat. However, critical habitat closures would be imposed on CDQ groups individually when their percentage of Atka mackerel CDQ harvest reaches the limit for each year and district.

##### *Extension of 20 nm No-Trawl Zones*

This action also would extend the 20 nm no-trawl zones around the Seguam and Agligadak rookeries in the Eastern District of the Aleutian Islands into a year round closure. At present, these rookeries are protected year-round by a 10 nm no-trawl zone, and from January 1 through April 15 by a 20 nm no-trawl zone. The current 10 and 20 nm no-trawl zones are set out in Table 5 to part 679.

##### **Additional Actions To Be Taken in the Future**

##### *Vessel Monitoring System (VMS)*

The Council recommended that NMFS establish a VMS requirement to monitor the activity of vessels fishing

with trawl gear after critical habitat areas are closed. NMFS hopes to implement VMS requirements for the Atka mackerel fishery prior to the start of the 1999 Atka mackerel B season, which would open on September 1, 1999. Until then, enforcement of the critical habitat closures contained in this rule would be accomplished through traditional methods, such as Coast Guard overflights and reports from vessels and on board observers.

The Council also requested that NMFS conduct an annual review of the impact and effectiveness of the management measures outlined above, i.e., the Atka mackerel season split, the progressive reduction of catch within critical habitat, the extension of 20 nm no-trawl zones, and the VMS, and develop a research plan to determine the effects of these management measures by area. NMFS intends to report annually to the Council on the impact and effectiveness of these management measures. Ongoing research on the effectiveness of these and other Steller sea lion protection measures is a critical element of NMFS' recovery program for Steller sea lions.

##### **Classification**

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

NMFS prepared an initial regulatory flexibility analysis that describes the impact this proposed rule, if adopted, would have on small entities. A copy of this analysis is available from NMFS (see ADDRESSES). The analysis made the following conclusions with respect to impacts on small entities:

*Business entities affected directly.* The actions being considered for the BSAI Atka mackerel fishery would have direct effects on fewer than 15 fishing vessels all of which are expected to be factory trawlers. In 1997, 12 factory trawlers participated in the BSAI Atka mackerel fishery and eight of these vessels accounted for 81 percent of the retained catch in that fishery. All of the factory trawlers in the Atka mackerel fishery are owned by seafood companies with annual receipts that exceed the \$3 million small entity threshold by the Small Business Administration for fish harvesting businesses. The combined annual receipts for the companies involved in the Atka mackerel fishery are not known. However, based on the value of fish these companies harvest in Alaska, and the annual reports of the publically held companies, the annual worldwide receipts for the companies involved in the Atka mackerel fishery is estimated to range from \$5 million to over \$3 billion. In 1998, 1 percent of the Atka mackerel TAC in Area 541 (127 mt) was allocated to vessels using jig gear. However, as of September 12, 1998, NMFS has not received any Atka mackerel catch reports by

vessels using jig gear in Area 541 and the entire 127 mt TAC allocation remains unharvested. Up to 10 vessels using jig gear had expressed interest in fishing for Atka mackerel in Area 541 and all of these vessels are small entities. However, the preferred alternative would exempt vessels using jig gear from the A-B season split, critical habitat restrictions, and VMS requirements. Therefore, all small entities using jig gear to fish for Atka mackerel would be unaffected by the proposed action.

*Small communities and groups affected directly.* Because, very little BSAI Atka mackerel is delivered to on-shore processors and because the principal participants in this fishery are not residents of Alaska fishing communities, with the exception of the CDQ communities, few small communities would be affected directly. With the expansion of the CDQ program to include all BSAI groundfish and crab, the 50 plus CDQ communities would be affected by actions that affect the Atka mackerel CDQ. However, the effects on these communities are not expected to be significant because Atka mackerel is expected to account for less than 5% of the value of the CDQs to these communities, none of the actions would eliminate all of the value of the Atka mackerel CDQs, and the CDQs are but one source of income for these communities. To further reduce the potential impacts of this action on CDQ groups, the Council's preferred alternative would exempt CDQ groups from the A-B season split so that CDQ groups are not forced to fish small amounts of Atka mackerel CDQ during two separate time periods.

*Business entities affected indirectly.* A much larger number of entities would be affected indirectly if the proposed actions result in the factory trawlers, that have dominated the Atka mackerel fishery, switching effort from the Atka mackerel fishery to other groundfish fisheries. If the fishing capacity of the eight factory trawlers that were the core of the Atka mackerel fleet in 1997 were diverted to other fisheries, these vessels could take substantially larger shares of the catch in the BSAI rock sole, Pacific cod, flathead sole, or other flatfish fishery or the GOA flatfish fisheries. Much of any such increase in catch by the core Atka mackerel fleet would be at the expense of other factory trawlers in the BSAI and both catcher vessels and other factory trawlers in the GOA. In 1996, 67 factory trawlers participated in BSAI and GOA Pacific cod fisheries and 42 factory trawlers participated in the various BSAI and GOA flatfish fisheries. In 1996, 180 trawl catcher vessels participated in the Pacific cod fisheries of the BSAI and GOA and 62 trawl catcher vessels participated in the various flatfish fisheries of the BSAI and GOA. Due to inshore/offshore TAC allocations for Pacific cod in the GOA and TAC splits between catcher vessels and catcher processors in the BSAI, catcher vessels participating in the Pacific cod fishery will be unaffected if Atka mackerel factory trawlers shift into the Pacific cod fishery. However, catcher vessels fishing for flatfish in the BSAI and GOA could face impacts if effort shifts away from Atka mackerel as a result of this action. The extent

to which these shifts may occur is impossible to quantify or predict.

Most of the factory trawlers operating in the BSAI and GOA Pacific cod and flatfish fisheries are owned by or affiliated with "large" entities. In addition, up to half of the catcher vessels fishing in the BSAI are believed to be owned by or affiliated with large entities. However, in a written comment to the Council submitted for this action, an industry representative for flatfish and Pacific cod factory trawlers indicated that more than 30 percent of the factory trawlers in the BSAI flatfish and Pacific cod fisheries expected 1998 annual gross revenues to be less than \$3 million. NMFS does not have information to confirm or refute this figure. Furthermore, the ownership characteristics of these vessels has not been analyzed to determine if they are independently owned and operated or affiliated with a larger parent company. Because NMFS cannot quantify the number of small entities that may be indirectly affected by this action, or quantify the magnitude of those effects, NMFS concludes that it is possible that this action could have a significant economic impact on a substantial number of small entities.

*Measures taken to reduce impacts on small entities.* The Council considered and adopted a series of exemptions to reduce the impacts of this action on small entities. The preferred alternative contains the following elements to reduce impacts on small entities: (1) Vessels using jig gear would be exempted from all aspects of the proposed action, (2) CDQ groups would be exempted from the A-B season split to prevent having to fish for small Atka mackerel CDQ amounts during two times of the year, and (3) vessels using hook-and-line gear would be exempt from the closure to fishing inside critical habitat. The critical habitat closures would affect vessels using trawl gear only, (4) both jig and hook and line vessels would be exempted from future VMS requirements for the Atka mackerel fishery.

As stated in the preceding paragraph and in the section entitled, "Business entities affected directly," all small entities in the Atka mackerel fishery (jig boats) are exempt from all aspects of this proposed action. NMFS is not aware of additional alternatives that could further mitigate this action's economic impact on small entities.

NMFS initiated a formal section 7 consultation under the ESA for this action. A biological opinion is under preparation that will determine whether the fishing activities conducted under this rule are likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or to result in the destruction or adverse modification of critical habitat.

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

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: November 3, 1998.

**Andrew A. Rosenberg,**

*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 § 679.20, paragraphs (a)(8) and (c)(2)(ii)(A) are revised to read as follows:

**§ 679.20 General limitations.**

\* \* \* \* \*

(a) \* \* \*

(8) *BSAI Atka mackerel*—(i) *Jig gear.* Vessels using jig gear will be allocated up to 2 percent of the TAC of Atka mackerel specified for the Eastern Aleutian Islands District and Bering Sea subarea, after subtraction of reserves, based on the following criteria:

- (A) The amount of Atka mackerel harvested by vessels using jig gear during recent fishing years;
- (B) The anticipated harvest of Atka mackerel by vessels using jig gear during the upcoming fishing year; and
- (C) The extent to which the jig-gear allocation will support the development of a jig-gear fishery for Atka mackerel while minimizing the amount of Atka mackerel TAC annually allocated to vessels using jig gear that remains unharvested at the end of the fishing year.

(ii) *Other gears.* The remainder of the Atka mackerel TAC, after subtraction of the jig gear allocation and reserves, will be allocated to vessels using other authorized gear types.

(A) *Seasonal allowances.* The Atka mackerel TAC specified for each subarea or district of the BSAI will be divided equally, after subtraction of the jig gear allocation and reserves, into two seasonal allowances corresponding to the A and B seasons defined at § 679.23(e)(3).

(B) *Overages and underages.* Within any fishing year, unharvested amounts of the A season allowance will be added to the B season allowance and harvests in excess of the A season allowance will be deducted from the B season allowance.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(A) The interim specifications for pollock and Atka mackerel will be equal to the first seasonal allowance for pollock and Atka mackerel that is published in the proposed specifications under paragraph (c)(1) of this section.

\* \* \* \* \*

3. In § 679.22, paragraphs (a)(7) and (a)(8) are revised to read as follows:

**§ 679.22 Closures.**

(a) \* \* \*

(7) *Steller sea lion protection areas, Bering Sea Subarea and Bogoslof District*—(i) *Year-round closures.* Trawling is prohibited within 10 nm of each of the eight Steller sea lion rookeries shown in Table 4a of this part.

(ii) *Seasonal closures.* During January 1 through April 15, or a date earlier than April 15, if adjusted under § 679.20, trawling is prohibited within 20 nm of each of the six Steller sea lion rookeries shown in Table 4b of this part.

(8) *Steller sea lion protection areas, Aleutian Islands Subarea*—(i) *10-nm closures.* Trawling is prohibited within 10 nm of each of the 17 Steller sea lion rookeries shown in Table 5a of this part.

(ii) *20-nm closures.* Trawling is prohibited within 20 nm of each of the two Steller sea lion rookeries shown in Table 5b of this part.

(iii) *Western and Central Aleutian Islands critical habitat closures*—(A) *General.* Trawling is prohibited within

areas designated as Steller sea lion critical habitat in the Western or Central Districts of the AI (see Table 1, Table 2, and Figure 4 of 50 CFR part 226) when the Regional Administrator announces by notification in the **Federal Register** that the criteria for a trawl closure in a district set out in paragraph (a)(8)(iii)(B) of this section has been met.

(B) *Criteria for closure.* The trawl closures identified in paragraph (a)(8)(iii)(A) of this section will take effect when the Regional Administrator determines that the harvest of a seasonal allowance of Atka mackerel specified under § 679.20(a)(8)(ii)(A) reaches the following percentage identified for each year and district:

Year	Western (543) (per cent)	Central (542) (per cent)
1999 .....	65	80
2000 .....	57	67
2001 .....	48	46
2002 and after .....	40	40

(C) *Duration of closure.* A Steller sea lion critical habitat area trawl closure within a district will remain in effect until NMFS closes Atka mackerel to directed fishing within the same district.

(D) *CDQ fishing.* Harvesting groundfish CDQ with trawl gear is prohibited within areas designated as

Steller sea lion critical habitat in the Western and/or Central Districts of the AI (see Table 1, Table 2, and Figure 4 of 50 CFR part 226) for an eligible vessel listed on an approved CDP after the CDQ group has harvested the percent of the annual Atka mackerel CDQ specified for the year and district at paragraph (a)(8)(iii)(B) of this section.

\* \* \* \* \*

4. In § 679.23, paragraph (e)(3) is redesignated as paragraph (e)(4) and a new paragraph (e)(3) is added to read as follows:

**§ 679.23 Seasons.**

\* \* \* \* \*

(e) \* \* \*

(3) *Directed fishing for Atka mackerel with trawl gear.* Subject to other provisions of this part, directed fishing for Atka mackerel with trawl gear in the Aleutian Islands Subarea is authorized only during the following two seasons:

(i) *A season.* From 0001 hours, A.l.t., January 1, through 1200 hours, A.l.t., April 15;

(ii) *B season.* From 1200 hours, A.l.t., September 1, through 1200 hours, A.l.t., November 1.

\* \* \* \* \*

5. In part 679, Table 5 is revised to read as follows: Table 5 to Part 679—Aleutian Islands Subarea Steller Sea Lion Protection Areas

Name of Island	From		To	
	Latitude	Longitude	Latitude	Longitude
3-nm NO TRANSIT ZONES described at part 227.12(a)(2) of this title				
<b>a. Trawling Prohibited Year-Round Within 10 nm:</b>				
Yunaska Island .....	52°42.0'N	170°38.5'W	52°41.0'N	170°34.5'W.
Kasatochi Island .....	52°10.0'N	175°31.0'W	52°10.5'N	175°29.0'W.
Adak Island .....	51°36.5'N	176°59.0'W	51°38.0'N	176°59.5'W.
Gramp Rock .....	51°29.0'N	178°20.5'W		
Tag Island .....	51°33.5'N	178°34.5'W		
Ulak Island .....	51°20.0'N	178°57.0'W	51°18.5'N	178°59.5'W.
Semisopchnoi .....	51°58.5'N	179°45.5'E	51°57.0'N	179°46.0'E.
Semisopchnoi .....	52°01.5'N	179°37.5'E	52°01.5'N	179°39.0'E.
Amchitka Island .....	51°22.5'N	179°28.0'E	51°21.5'N	179°25.0'E.
Amchitka Is./Column Rocks .....	51°32.5'N	178°49.5'E		
Ayugadak Point .....	51°45.5'N	178°24.5'E		
Kiska Island .....	51°57.5'N	177°21.0'E	51°56.5'N	177°20.0'E.
Kiska Island .....	51°52.5'N	177°13.0'E	51°53.5'N	177°12.0'E.
Buldir Island .....	52°20.5'N	175°57.0'E	52°23.5'N	175°51.0'E.
Agattu Is./Gillion Pt .....	52°24.0'N	173°21.5'E		
Agattu Island .....	52°23.5'N	173°43.5'E	52°22.0'N	173°41.0'E.
Attu Island .....	52°54.5'N	172°28.5'E	52°57.5'N	172°31.5'E.
<b>b. Trawling Prohibited Year-Round Within 20 nm:</b>				
Seguam Island .....	52°21.0'N	172°35.0'W	52°21.0'N	172°33.0'W.
Agligadak Island .....	52°06.5'N	172°54.0'W		

Note: Each rookery extends in a clockwise direction from the first set of geographic coordinates, along the shoreline at mean lower low water, to the second set of coordinates; if only one set of geographic coordinates is listed, the rookery extends around the entire shoreline of the island at mean lower low water.