

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679****[Docket No. 040713206-4292-02; I.D. 070704F]****RIN 0648-AR77****Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to the Annual Harvest Specifications Process for the Groundfish Fisheries of the Gulf of Alaska and the Bering Sea and Aleutian Islands Management Area****AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule that implements Amendment 48 to the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska (GOA) and Amendment 48 to the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI) (Amendments 48/48). Amendments 48/48 revise the administrative process used to establish annual harvest specifications for the groundfish fisheries of the GOA and the BSAI and update the FMPs by revising the description of the groundfish fisheries and participants, revising the name of the BSAI FMP, revising text to simplify wording and correct typographical errors, and revising the description of the North Pacific Fishery Management Council (Council) Groundfish Plan Teams' responsibilities. This action is necessary to manage fisheries based on the best scientific information available, to provide adequate opportunity for prior public review and comment to the Secretary of Commerce (Secretary) on Council recommendations, to provide additional opportunity for Secretarial review, to minimize unnecessary disruption to fisheries, to promote the public's understanding, and to promote administrative efficiency. The final rule revises regulations to implement the new harvest specifications process in Amendments 48/48 and revises the name of the BSAI FMP. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMPs, and other applicable laws.

**DATES:** Effective December 8, 2004, except that the amendments to §§ 679.20(c)(5) and (c)(6) and

679.62(a)(3) will be effective April 1, 2005.

**ADDRESSES:** Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and the Final Regulatory Flexibility Analysis (FRFA) prepared for Amendments 48/48 and the final rule may be obtained by mail from NMFS Alaska Region, P. O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Durall, or from the NMFS Alaska Region website at [www.fakr.noaa.gov](http://www.fakr.noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Melanie Brown, 907-586-7228 or [melanie.brown@noaa.gov](mailto:melanie.brown@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The groundfish fisheries in the Exclusive Economic Zone of the GOA and the BSAI are managed under the FMPs. The Council prepared the FMPs under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The Council submitted Amendments 48/48 for Secretarial review and a notice of availability (NOA) of the FMP amendments was published in the **Federal Register** on July 14, 2004 (69 FR 42128), with comments on the FMP amendments included through September 13, 2004. A complete description of the amendments is in the NOA. The proposed rule for this action was published in the **Federal Register** on July 27, 2004 (69 FR 44634), with comments on the proposed rule invited through September 10, 2004. Four letters of comment were received on the FMP amendments and the proposed rule. Comments are summarized and responded to under Comments and Responses, below. The Secretary approved Amendments 48/48 on October 12, 2004.

**Background**

Amendments 48/48 were unanimously recommended by the Council in October 2003. These amendments revise the administrative process used to establish harvest specifications for the groundfish fisheries of the BSAI and GOA. Harvest specifications establish specific limits on the commercial harvest of groundfish and are used to manage the groundfish fisheries. Harvest specifications include total allowable catch (TAC), acceptable biological catch (ABC), overfishing levels, and prohibited species catch amounts, and apportionments thereof, which have been recommended by the Council. The current regulations

authorize annual harvest specifications that are applicable January 1 through December 31. The objectives in revising the harvest specifications process are to: (1) manage fisheries based on the best scientific information available, (2) provide adequate opportunity for prior public review and comment to the Secretary on Council recommendations, (3) provide additional opportunity for Secretarial review, (4) minimize unnecessary disruption to fisheries and public confusion, and (5) promote administrative efficiency.

The changes to the harvest specifications process under Amendments 48/48 and considerations in establishing harvest specifications are described in the proposed rule (69 FR 44634, July 27, 2004). This action provides consistency between the groundfish FMPs for the harvest specifications process and provides flexibility during the harvest specifications process to react to the best available science. Amendments 48/48 allow harvest specifications to be effective for up to two fishing years, allowing for the use of either an annual or biennial harvest specifications process. For species on an annual harvest specifications process schedule, two years of harvest specifications will be established, with the second year of specifications being superseded in approximately March or June of the second year by the new set of two years of harvest specifications established each year. Specifying annually two-year harvest specifications is necessary to allow for Administrative Procedure Act rulemaking requirements to be met after the December Council recommendations without disrupting the start of the groundfish fisheries and to ensure that harvest specifications can be updated on an annual basis. A full second year of harvest specifications also is necessary to provide the annual TAC basis for the seasonal apportionment of harvest and associated fisheries that are conducted in the early part of the fishing year.

The stock assessment models used for determining the harvest specifications use two-year projections for biomass and ABC. The frequency of fishery resource surveys also affects whether new information is available to support adjustments to harvest specifications on an annual or biennial basis. Allowing specifications to be effective for up to two years fits well with the frequency of stock projections that must be used for the harvest specifications and provides the Council and NMFS the flexibility to adjust the specifications process frequency in response to potential changes in the frequency of stock assessment surveys or other stock

assessment data or administrative issues.

### Regulatory Amendments

Amendment 48 to the BSAI FMP revises the title of the FMP to read "The Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area." This change provides a more concise description of the BSAI FMP, establishes consistency with the name of the GOA groundfish FMP, and reduces confusion for users of the two documents. In § 679.1(b), the title of the BSAI FMP is revised to reflect the new title resulting from the approval of Amendment 48 to the BSAI FMP.

Sections 679.20 and 679.21 are revised to implement the new administrative process for harvest specifications under Amendments 48/48. In §§ 679.20(c)(1) and (c)(3) and 679.21(d)(1)(i), (e)(1)(ii), (e)(1)(iii), and (e)(6)(i), the revisions authorize harvest specifications to remain in effect for up to two fishing years, allowing time to comply with rulemaking requirements and ensuring that management is based on the best scientific information available.

Section 679.20(c)(1) is further revised to remove the requirement to address the U. S. harvesting and processing capacity in the proposed harvest specifications. This requirement was necessary when foreign groundfish fishing occurred before the 1990s. Harvesting and processing groundfish in Alaskan waters are performed exclusively by U. S. owned and operated vessels and processors under the Magnuson-Stevens Act and the American Fisheries Act (AFA). Amendments 48/48 remove references to allocations to foreign fishing in the FMPs, and this revision makes the regulations consistent with the FMPs.

The final rule allows NMFS to specify the length of the public comment period for the proposed harvest specifications when the proposed specifications are published. Current regulations require a public comment period of 30 days (§§ 679.20(c)(1), 679.21(d)(2), and 679.21(e)(6)(ii)). The final rule affords NMFS the discretion to specify a comment period of a reasonable period given the length of the document and the complexity of the issues presented when the proposed specifications are published.

The final rule rescinds provisions for interim harvest specifications at § 679.20(c)(2) on April 1, 2005. However, as NMFS implements the new harvest specification process, interim harvest specifications are needed in 2005 until the new harvest

specifications are effective. The use of interim harvest specifications until April 1, 2005, ensures no disruption to the 2005 groundfish fisheries prior to the effective date of the final 2005 harvest specifications. Once harvest specifications are implemented under Amendments 48/48, interim harvest specifications no longer are needed. Thus, the applicable regulatory provision authorizing interim harvest specifications is rescinded on April 1, 2005.

The species listed for seasonal allowances for the final harvest specifications under §§ 679.20 (c)(1)(ii), (c)(1)(iii), (c)(3)(ii) and (c)(3)(iii) are revised by the final rule. The Steller sea lion protection measures (68 FR 204, January 2, 2003) require the seasonal apportionment of the harvest of Pacific cod, pollock, and Atka mackerel in the BSAI and of Pacific cod and pollock in the GOA. The current regulations reference seasonal harvest specifications only for pollock in the BSAI and GOA. The final rule adds Pacific cod and Atka mackerel seasonal allowances to the BSAI harvest specifications and Pacific cod seasonal allowances to the GOA harvest specifications. Paragraphs (c)(1)(ii) and (c)(1)(iii) of the same section also are revised to be consistent with (c)(3)(ii) and (c)(3)(iii) of the same section so that proposed and final harvest specifications contents are consistent.

The final rule revises §§ 679.20(c)(5) and (c)(6), and 679.62(a)(3) to remove references to interim harvest specifications. Interim harvest specifications will not be used once the new harvest specifications process is effective. These revisions will be effective April 1, 2005, when the regulations for interim harvest specifications at § 679.20(c)(2) are removed.

No changes were made to the final rule from the proposed rule.

### Comments and Responses

Four letters containing 11 unique comments were received regarding the amendments and proposed rule. The comments are summarized and responded to below.

*Comment 1.* Concern exists regarding use of a biennial harvest specifications process for rockfish species which have TACs established at or near the ABCs. Rockfish species are of particular concern because of their biological sensitivity and high economic value. Significant changes have occurred for some of these species between the proposed and final TAC values based on information available between surveys. Allowing specifications for rockfish to

be based on two year old surveys may harm the stocks by allowing too much harvest or may unnecessarily constrain the fishery. Under the future management programs, rockfish harvest likely will be conducted up to the TAC level, so that a TAC set at too high a level has more potential for adverse impacts on the stock.

*Response.* Amendments 48/48 allow NMFS to adjust the frequency of harvest specifications for a particular species or species group to ensure the use of best available science information. Specifications may be effective for up to two years, but the final rule does not require a biennial harvest specifications process for any GOA species. The EA/RIR/IRFA for Amendments 48/48 (see **ADDRESSES**) analyzes the impact of using a biennial process for certain long-lived GOA species, including rockfish, so that the Council and NMFS can make an informed decision during the harvest specifications process in October through December of each year as to whether a particular species should be managed using biennial or annual harvest specifications. The Council has recommended that GOA rockfish be managed on a biennial harvest specifications process based on the information available in the EA/RIR/IRFA for Amendments 48/48. However, new fishery information will be considered during the development of harvest specifications to determine the appropriate effectiveness period of specifications for GOA rockfish species within the two-year maximum. Concerns about the frequency of the harvest specifications process should be brought to the Council's groundfish plan teams and Science and Statistical Committee for consideration during their September and October meetings, respectively.

*Comment 2.* The primary objective of this rule should be fish health and abundance. The allowance of continual overfishing is severely impacting our children's heritage. The intention of this rule is to add more bureaucracy to confuse the public on how much of our children's heritage is being taken by commercial fisheries.

*Response.* NMFS' primary objective during the harvest specifications process is the conservation and management of fish resources. Annual or biennial review of the stock assessments for each managed species and the setting of TACs at levels that prevent overfishing help accomplish this objective. Currently, no Alaska groundfish species are known to be experiencing overfishing. This rule provides a meaningful opportunity to the public to review and comment on

harvest specifications and is not bureaucratic.

*Comment 3.* Making a point of helping small businesses is ridiculous. Small businesses may instantly access decisions by computers.

*Response.* The commentor may be referring to the IRFA analysis completed for this action and the description of the results in the preamble to the proposed rule. This analysis of the potential impacts on small businesses is required by the Regulatory Flexibility Act. The analysis is intended to identify aspects of the action that may be further refined to prevent disproportional adverse impacts on small businesses.

*Comment 4.* A preferred alternative means that anything the environmental public say will be ignored.

*Response.* A preferred alternative in a draft EA identifies to the reader the alternative at the time of the draft analysis that is deemed to be the most likely alternative to be implemented based on the results to date in the analysis. Identification of the preferred alternative focuses public comment on the most likely alternative, but comments from all members of the public regarding any proposed rule, FMP amendment, and the supporting draft analyses for both are carefully reviewed and considered before a final decision is made. Public comments can and do influence the development of the final analyses and rules and play a critical role in NMFS' rulemaking process.

*Comment 5.* Quotas should be cut by 50 percent the first year and 10 percent each year after. Marine sanctuaries should be established.

*Response.* This action revises the administrative process used to establish harvest levels for a fishing year. The specification of harvest levels is done by separate rulemaking during the harvest specifications process. The decisions on the amount of harvest are based on the best available science and socioeconomic considerations. Whether quotas should be reduced or not is a decision made during the development of harvest specifications and is not germane to this action.

Additionally, this action does not address the creation of marine sanctuaries. The concept of establishing marine reserves is explored in the draft environmental impact statement (EIS) for essential fish habitat (EFH) dated January 2004. Further information on the draft EIS may be found at the NMFS Alaska Region website at [www.fakr.noaa.gov](http://www.fakr.noaa.gov).

*Comment 6.* The Pew Foundation reports on overfishing and regional fishery management council bias and

the United Nations report on overfishing are incorporated into the comments from this commentor.

*Response.* This action has no relationship to overfishing concerns or the membership of regional fishery management councils. The specific concerns and relationship to this action that are represented by these reports are not presented by the commentor. Because no further details are provided by the commentor, NMFS is unable to respond further to this comment.

*Comment 7.* The proposed rule is written to confuse the public and should be rewritten so that a 12 year old may understand the rule. The proposed rule should be written in compliance with the law that requires the use of plain English.

*Response.* NMFS strives to use plain language in all documents it creates, including this rule. NMFS has reviewed the language of this rule and believes it is clearly written.

*Comment 8.* The term "maximizing" is the same as "overfishing." A two year schedule is an invitation to overfish.

*Response.* Maximizing the harvest of managed species is not the same as overfishing. Overfishing is defined in section 3 of the Magnuson-Stevens Act as a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis. None of the groundfish species managed in Alaska are known to be experiencing overfishing or are overfished. Maximizing harvest is an important goal related to the Magnuson-Stevens Act and the FMPs. The final rule ensures that harvest levels set for a two-year time period are adjusted through the harvest specifications process to prevent overfishing and to provide for the optimum yield on a continuing basis.

*Comment 9.* The preamble of the proposed rule should explain the criteria used to determine "good cause" to waive the prior public review and comment on changes made in the harvest specifications between the proposed and final rule under the APA. The criteria should include the use of the best scientific information and consideration of achieving the optimum yield, as described in national standards 1 and 2 of the Magnuson-Stevens Act. This would ensure the "good cause" waiver may be used to adjust TACs either up or down.

*Response.* "Good cause" to waive prior public review and comment under APA during rulemaking will be determined specific to the relevant circumstances at the time the determination is to be made, and must

be based upon specific criteria enumerated in the APA.

*Comment 10.* NMFS should not use the standard of a "logical outgrowth" in evaluating the differences between the proposed and final harvest specifications. Logical outgrowth is a legal test that is developed in common law. If a "substantial relation" test is used that applies technical expertise and evaluation, NMFS' decision may be accorded more deference in court.

*Response.* The notice and comment procedures of the APA provide for public participation in the development of rules and produce more informed agency decisionmaking. In order to accomplish these goals, notices of proposed rulemaking must inform the public of the issues in the rulemaking. If a final rule differs to such an extent from the proposed rule that the public was inadequately informed of the issues at stake in the rulemaking, a court may vacate that final rule on the ground that the notice of proposed rulemaking did not provide the public adequate notice. The question of providing the public with adequate notice in a particular rulemaking depends very much on the specific facts and circumstances of the rulemaking. Courts have developed the logical outgrowth test to evaluate the adequacy of notice by determining whether a particular final rule was a logical outgrowth of its notice of proposed rulemaking - that is, whether the purposes of notice and comment were adequately served in the proposed rule. NMFS believes that this is the appropriate standard to apply to notices of proposed and final specifications to ensure achievement of the APA's objectives and success in litigation over fishery specifications.

*Comment 11.* Harvest specifications should be effective for no more than 18 months rather than for up to two years. NMFS should not depart from using the most recent survey to calculate harvest specifications and should not abandon annual surveys or rulemaking proceedings for cost or other reasons. Allowing harvest specifications to be effective for up to two years was not contemplated during or analyzed in development of Amendments 48/48 and requires a new amendment process to implement.

*Response.* The rule does not require NMFS to change the current frequency of surveys or to abandon the annual harvest specifications process; however, it does allow NMFS and the Council to implement harvest specifications that will be effective for up to two years when the best available science indicates that a fishery should be managed on a biennial basis.

Alternative 4 of the EA/RIR/IRFA analyzed the impact of two year harvest specifications for all species. Alternative 5 analyzed using an annual harvest specifications process to set harvest specifications for up to two fishing years, with the understanding that the second fishing year's TACs would be replaced each year by a new set of TACs for the current and following fishing year. In addition to the most recent stock assessments, the EA/RIR/IRFA for Amendments 48/48 provides information on the impacts of a decision to move a species from an annual harvest specifications process to a biennial process. Amendments 48/48 fall within the scope of the analysis, and no additional analysis is needed.

#### Classification

The Regional Administrator determined that Amendments 48/48 are necessary for the conservation and management of the BSAI and GOA groundfish fisheries and that they are consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

NMFS prepared an FRFA which incorporates the IRFA and a summary of the analyses completed to support the action. A copy of these analyses is available from NMFS (see **ADDRESSES**). The FRFA did not reveal any Federal rules that duplicate, overlap, or conflict with the action. The following summarizes the FRFA.

#### *Need for and Objectives of This Action*

The need and objectives for this action are described above in the preamble to this final rule.

#### *Issues Raised by Public Comments on the IRFA*

The proposed rule was published in the **Federal Register** on July 27, 2004 (69 FR 44634) with comments on the proposed rule invited through September 10, 2004. An IRFA was prepared for the proposed rule and described in the Classification section of the preamble to that rule. One public comment was received that may have been in response to the IRFA. See Comment 3 in the preamble to this rule for more information. No changes were made to the final rule from the proposed rule in response to this comment.

#### *Number and Description of Small Entities Affected by the Rule*

The entities directly regulated by this action are those that commercially harvest federally managed groundfish in the BSAI and GOA. These entities

include the groundfish catcher vessels and catcher/processor vessels active in these areas. They also include organizations to which direct allocations of groundfish are made. In the BSAI, this includes the Western Alaska Community Development Quota (CDQ) groups and the American Fisheries Act fishing cooperatives.

Pursuant to the Small Business Administration criteria and NMFS guidelines, fishing vessels, including catcher vessels and catcher/processors, are considered "small entities" if they gross less than \$3.5 million in a year, when all their affiliated elements are taken together. Catcher vessel gross revenues are measured at the ex-vessel level. Catcher/processor revenues are the first wholesale value of the processed product. About 840 catcher vessels, 33 catcher/processors, and six CDQ groups were estimated to be small entities under this criterion.

#### *Alternatives to the Proposed Action*

Four alternatives to the preferred alternative were considered. Alternative 1 would require NMFS to publish proposed specifications, followed by interim and final specifications, under the status quo schedule. Alternative 1 may result in larger harvests than Alternatives 2 through 4 and, thus, potentially higher average revenues for small entities. This alternative is the most constraining of the alternatives with respect to small businesses' access to the decision-making process. This alternative fails to achieve the objectives of the proposed action in that it does not provide opportunity for prior public review and comment on interim specifications and does not guarantee meaningful opportunity for public comment on the proposed specifications to the Secretary. For this reason, this alternative was not chosen.

Alternative 2 would eliminate interim harvest specifications and would require NMFS to issue proposed and final harvest specifications before the start of the fishing year. This alternative would improve opportunities for small businesses' access to the decision making process. However, this alternative would introduce an additional year's lag between the time fishery survey data become available and the time harvest specifications based on those data are implemented. The alternative may result in reductions in groundfish harvests and revenues and increased year-to-year variation in harvests. These changes could reduce small entities' revenues, but disproportionate impacts on small entities are not identified. These potential adverse effects to small

entities outweigh the benefits from an enhanced rulemaking process. The potential for revenue reductions caused this alternative to be rejected.

Alternative 3 would postpone the start of the fishing year by six months to provide enough time for proposed and final harvest specifications. An option to this alternative would postpone the start of the fishing year for most species by six months, but would not change the fishing year for sablefish IFQ fisheries. This option would protect the IFQ management of the sablefish fisheries. This alternative would have revenue impacts very similar to those for Alternative 5, the preferred alternative. Alternative 5 was preferred to this one due to the administrative problems for managers and fishermen that might be associated with a change in the fishing year.

Alternative 4 would use stock assessment projections to prepare biennial harvest specifications, while setting PSC limits annually. This alternative would improve opportunities for small business access to the decision making process. The two options for this alternative are likely to result in larger potential reductions in harvests and revenues than Alternative 2 and in more potential for year-to-year variation in harvests. The changes could reduce small entities' revenues, but disproportionate impacts on small entities are not identified. The potential adverse effects outweigh the enhanced rulemaking process in this alternative and are no better for directly regulated small entities than Alternative 5.

Alternative 5 is the preferred alternative. Under this alternative, harvest specifications would be set for up to two years. Harvest specifications would be superseded by new harvest specifications typically published between March and June of the second year. This alternative would provide increased opportunities for notice and comment under the APA. This alternative would introduce relatively modest lags between biological surveys and subsequent harvest specifications, thus creating relatively modest adverse revenue impacts compared with Alternatives 2 and 4. If a second proposed rule is required, the revenue effects would be similar to Alternative 3; if not, they may be similar to those for Alternative 1.

#### *Recordkeeping and Reporting Requirements*

Nothing in the action would result in changes in reporting or recordkeeping requirements.

### Small Entity Compliance Guide

This action revises 50 CFR part 679 which describes the procedures for the harvest specifications process for the Alaska groundfish fisheries. This action does not require any additional compliance from small entities as it provides an administrative change to the process for establishing harvest specifications. Copies of this final rule are available from NMFS (see ADDRESSES) and at the following website: <http://www.fakr.noaa.gov>.

### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: November 2, 2004.

#### Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For 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.*; 16 U.S.C. 1540(f); Pub. L. 105–277, Title II of Division C; Pub. L. 106–31, Sec. 3027; and Pub. L. 106–554, Sec. 209.

■ 2. In § 679.1, the introductory heading of paragraph (b) is revised to read as follows:

#### § 679.1 Purpose and scope.

\* \* \* \* \*

(b) *Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.*

\* \* \*

\* \* \* \* \*

■ 3. In § 679.20, paragraphs (c)(1), (c)(3), (c)(5), (c)(6), and the introductory paragraph to (c)(2) are revised to read as follows:

#### § 679.20 General limitations.

\* \* \* \* \*

(c) *Annual specifications—(1)*

*Proposed specifications—(i)*

*Notification.* As soon as practicable after consultation with the Council, NMFS will publish proposed specifications for the groundfish fisheries in the BSAI and the GOA.

(ii) *Public comment.* NMFS will accept public comment on the proposed specifications established by this section and by § 679.21 for a period specified in the notice of proposed specifications published in the **Federal Register**.

(iii) *GOA.* The proposed specifications will specify for up to two

fishing years the annual TAC for each target species and the “other species” category and apportionments thereof, halibut prohibited species catch amounts, and seasonal allowances of pollock and Pacific cod.

(iv) *BSAI.* The proposed specifications will specify for up to two fishing years the annual TAC for each target species and the “other species” category and apportionments thereof, PSQ reserves and prohibited species catch allowances, seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC (including pollock, Pacific cod, and Atka mackerel CDQ), and CDQ reserve amounts.

(2) *Interim specifications.* (Applicable until April 1, 2005.) Interim harvest specifications will be in effect on January 1 and will remain in effect until superseded by the filing of the final specifications by the Office of the **Federal Register**. Interim specifications will be established as follows:

\* \* \* \* \*

(3) *Final specifications—(i) Procedure and notification.* NMFS will consider comments received on the proposed specifications and, after consultation with the Council, will publish a notice of final specifications in the **Federal Register** unless NMFS determines that the final specifications would not be a logical outgrowth of the notice of proposed specifications. In that event, NMFS will either:

(A) Publish a revised notice of proposed specifications in the **Federal Register** for public comment, and after considering comments received on the revised proposed specifications, publish a notice of final specifications in the **Federal Register**; or

(B) Publish a notice of final specifications in the **Federal Register** without an additional opportunity for public comment based on a finding that good cause pursuant to the Administrative Procedure Act justifies waiver of the requirement for a revised notice of proposed specifications and opportunity for public comment thereon.

(ii) *GOA.* The final specifications will specify for up to two fishing years the annual TAC for each target species and the “other species” category and apportionments thereof, halibut prohibited species catch amounts, and seasonal allowances of pollock and Pacific cod.

(iii) *BSAI.* The final specifications will specify for up to two fishing years the annual TAC for each target species and the “other species” category and apportionments thereof, PSQ reserves and prohibited species catch

allowances, seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC (including pollock, Pacific cod, and Atka mackerel CDQ), and CDQ reserve amounts.

\* \* \* \* \*

(5) *BSAI Pacific cod gear allocations.* (Effective April 1, 2005) The proposed and final specifications will specify the allocation of BSAI Pacific cod among gear types as authorized under paragraph (a)(7) of this section.

(6) *BSAI Atka mackerel allocations.* (Effective April 1, 2005) The proposed and final specifications will specify the allocation of BSAI Atka mackerel among gear types and HLA fisheries as authorized under paragraph (a)(8) of this section.

\* \* \* \* \*

■ 4. In § 679.21, paragraphs (d)(1)(i), (d)(2), and (e)(6), and introductory paragraphs to (e)(1)(ii) and (e)(1)(iii), are revised to read as follows:

#### § 679.21 Prohibited species bycatch management.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(i) *Proposed and final limits and apportionments.* NMFS will publish in the **Federal Register** proposed and final halibut PSC limits, and apportionments thereof, in the notification required under § 679.20.

\* \* \* \* \*

(2) *Public comment.* NMFS will accept public comment on the proposed halibut PSC limits, and apportionments thereof, for a period specified in the notice of proposed halibut PSC limits published in the **Federal Register**. NMFS will consider comments received on proposed halibut PSC limits and, after consultation with the Council, will publish notification in the **Federal Register** specifying the final halibut PSC limits and apportionments thereof.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(ii) *Red king crab in Zone 1.* The PSC limit of red king crab caught by trawl vessels while engaged in directed fishing for groundfish in Zone 1 during any fishing year will be specified for up to two fishing years by NMFS, after consultation with the Council, based on abundance and spawning biomass of red king crab using the criteria set out under paragraphs (e)(1)(iii)(A) through (C) of this section. The following table refers to the PSC limits for red king crab that you must follow in Zone 1:

\* \* \* \* \*

(iii) *Tanner crab (*C. bairdi*).* The PSC limit of *C. bairdi* crabs caught by trawl

vessels while engaged in directed fishing for groundfish in Zones 1 and 2 during any fishing year will be specified for up to two fishing years by NMFS under paragraph (e)(6) of this section, based on total abundance of *C. bairdi* crabs as indicated by the NMFS annual bottom trawl survey, using the criteria set out under paragraphs (e)(1)(iii)(A) and (B) of this section.

\* \* \* \* \*

(6) *Notification*—(i) *General*. NMFS will publish in the **Federal Register**, for up to two fishing years, the annual red king crab PSC limit, and, if applicable, the amount of this PSC limit specified for the RKCSS, the annual *C. bairdi* PSC limit, the annual *C. opilio* PSC limit, the proposed and final PSQ reserve amounts, the proposed and final bycatch allowances, the seasonal

apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, as required by paragraph (e) of this section.

(ii) *Public comment*. Public comment will be accepted by NMFS on the proposed annual red king crab PSC limit and, if applicable, the amount of this PSC limit specified for the RKCSS, the annual *C. bairdi* PSC limit, the annual *C. opilio* PSC limit, the proposed and final bycatch allowances, seasonal apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, for a period specified in the notice of proposed specifications published in the **Federal Register**.

\* \* \* \* \*

■ 5. In § 679.62, paragraph (a)(3) is revised to read as follows:

**§ 679.62 Inshore sector cooperative allocation program.**

(a) \* \* \*

(3) *Conversion of quota share percentage to TAC allocations*. (Effective April 1, 2005) Each inshore pollock cooperative that receives a quota share percentage for a fishing year will receive an annual allocation of Bering Sea and/or Aleutian Islands pollock that is equal to the cooperative's quota share percentage for that subarea multiplied by the annual inshore pollock allocation for that subarea. Each cooperative's annual pollock TAC allocation may be published in the proposed and final BSAI harvest specifications notice.

\* \* \* \* \*

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