

20.9 percent of the GB cod TAC available for harvest during the remainder of FY 2007. Analysis of GB cod landings from the Eastern U.S./Canada Area for fishing years 1999 through 2003 (the most recent years the area was not subject to in-season management) shows that GB cod are proportionally less abundant than co-occurring GB haddock during the months of October and November than in other months. Therefore, reopening the Eastern U.S./Canada Area, including the Eastern U.S./Canada Haddock SAP, through the month of November will allow NE multispecies DAS vessels increased access to the substantial Eastern U.S./Canada Area GB haddock TAC, and provide increased opportunities to achieve optimum yield in the groundfish fishery. Data indicate that reopening the Eastern U.S./Canada Area through November with a 1,000-lb (454-kg) GB cod trip limit will not likely result in the overharvest of the GB cod TAC. The 1,000-lb (454-kg) GB cod trip limit is consistent with the trip limit for the SAP and is intended to discourage the targeting of GB cod.

Therefore, based on the historical seasonal stock abundance data and the available GB cod TAC, and pursuant to the regulations at § 648.85(a)(3)(iv)(D), effective 0001 hr October 20, 2007, through 2400 hr local time, November 30, 2007, the Eastern U.S./Canada Area, including the Eastern U.S./Canada Haddock SAP, is open to all NE multispecies DAS vessels and the GB cod possession limit for all NE multispecies vessels fishing in the Eastern U.S./Canada Area is 1,000 lb/trip (454-kg/trip). GB cod landings will continue to be monitored through VMS and other available information. If 100 percent of the TAC allocation for GB cod is projected to be harvested prior to the end of November, the Eastern U.S./Canada Area, including the Eastern U.S./Canada Haddock SAP, will be closed to all NE multispecies DAS vessels for the remainder of the fishing year (i.e., through April 30, 2008).

#### Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), there is good cause to waive prior notice and opportunity for public comment, as well as the delayed effectiveness for this action, because prior notice and comment and a delayed effectiveness would be impracticable and contrary to the public interest. This action relieves a restriction by opening the Eastern U.S./Canada Area, including the Eastern U.S./Canada Area Haddock

SAP, to all NE multispecies DAS vessels through November 30, 2007, to allow access to the substantial GB haddock TAC (6,270 mt).

This action is authorized by the regulations at § 648.85(a)(3)(iv)(D) to facilitate achieving the U.S./Canada Management Area TACs. It is important to take this action immediately because GB cod, which has a relatively small TAC (494 mt), are proportionally less abundant than co-occurring GB haddock during the months of October and November than in either prior or subsequent months. Any delay in the implementation of this action would decrease the opportunity available for vessels to selectively target haddock in the Eastern U.S./Canada Area while cod bycatch rates are expected to be low. Once the GB cod TAC is achieved, the regulations require the closure of the Eastern U.S./Canada Area for the remainder of FY 2007, preventing access to the GB haddock TAC. This action is being taken at this time to take advantage of the seasonal variation of relative stock abundance in order to allow access to the abundant GB haddock stock with minimized GB cod bycatch.

The time necessary to provide for prior notice, opportunity for public comment, and delayed effectiveness for this action would prevent the agency from taking immediate action, preventing NE multispecies DAS vessels from efficiently targeting GB haddock in the Eastern U.S./Canada Area when GB haddock can be targeted with minimal bycatch of GB. The Regional Administrator's authority to open and close this area to help ensure that the shared U.S./Canada stocks of fish are harvested, but not exceeded, was considered and open to public comment during the development of Amendment 13 and FW 42. Further, the potential of reopening of the Eastern U.S./Canada Area was announced to the public at closure of the Eastern U.S./Canada Area in June. Therefore, any negative effect the waiving of public comment and delayed effectiveness may have on the public is mitigated by these factors.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 18, 2007.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 0612242903-7445-03; I.D. 112006I]

RIN 0648-AU48

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod Allocations in the Bering Sea and Aleutian Islands Management Area; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** NMFS is correcting a final rule that appeared in the **Federal Register** on September 4, 2007. The final rule implemented Amendment 85 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) as partially approved by NMFS, and implemented recent changes to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Amendment 85 modified the current allocations of Bering Sea and Aleutian Islands Management Area (BSAI) Pacific cod total allowable catch, and seasonal apportionments thereof, among various harvest sectors. The final rule also included the congressionally mandated increase in the allocation of BSAI Pacific cod to the Community Development Quota (CDQ) Program.

**DATES:** Effective January 1, 2008.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

#### Background

A final rule published on September 4, 2007 (72 FR 50788), implemented Amendment 85 to the FMP by modifying the current allocations of BSAI Pacific cod total allowable catch (TAC) among various harvest sectors and seasonal apportionments thereof. The rule also established a hierarchy for reallocating projected unharvested amounts of Pacific cod from certain sectors to other sectors, revised catcher/processor (CP) sector definitions, modified the management of Pacific cod incidental catch that occurs in other groundfish fisheries, eliminated the Pacific cod nonspecified reserve, subdivided the annual prohibited

species catch (PSC) limits currently apportioned to the Pacific cod hook-and-line gear fisheries between the catcher vessel and CP sectors, and modified the sideboard restrictions for American Fisheries Act (AFA) CP vessels. In addition, the rule increased the percentage of the BSAI Pacific cod TAC apportioned to the CDQ Program. That final rule is effective January 1, 2008.

After publishing the final rule to implement Amendment 85, NMFS published a separate final rule to implement Amendment 80 to the FMP on September 14, 2007 (72 FR 52668). Amendment 80 primarily allocated several BSAI non-pollock trawl groundfish fisheries among fishing sectors, facilitated the formation of harvesting cooperatives in the non-AFA trawl CP sector, and established a limited access privilege program for that sector. Most provisions of the Amendment 80 final rule were effective October 15, 2007.

**Need for Corrections**

Among other regulatory changes, the final rules implementing Amendment 80 and Amendment 85 modified current regulations under § 679.21(e) that concern PSC bycatch management. The regulatory changes made by the Amendment 85 final rule included a rearrangement of portions of § 679.21(e) to improve the organization of the regulations. The proposed rule for Amendment 85 published on February 7, 2007 (72 FR 5654), explained some of this reorganization on page 5668: “The information in § 679.21(e)(1)(i) and (e)(2)(ii), concerning the reserves in the BSAI for the CDQ Program, would be moved to § 679.21(e)(3)(i)(A) and (e)(4)(i)(A) respectively. This regulatory text would be moved from the paragraphs allocating PSC by species, to the more appropriate location under the paragraphs making PSC apportionments to the various fishery categories.”

However, because Amendment 85 has a later effective date than Amendment 80, an unintended result of this reorganization is that some regulatory changes made by the Amendment 85 final rule will overwrite some regulatory changes made by the Amendment 80 final rule. Specifically, the final rule for Amendment 85 as published will remove regulatory text allocating prohibited species quota to CDQ groups, a reference to PSC cooperative quota assigned to Amendment 80

cooperatives, and paragraphs concerning Amendment 80 sector bycatch limitations.

The preservation of the new regulatory text approved under Amendment 80 in light of the non-substantive reorganization intended by Amendment 85 is the goal of this correction notice. In other words, the intent of the regulatory reorganization made by Amendment 85 was not to change the substance of existing regulations but to move and consolidate several existing regulatory provisions. Therefore, two paragraphs in the Amendment 85 final rule will be corrected to reflect new regulatory language approved under Amendment 80 and an instruction for § 679.21 will be inserted. First, the new regulatory text at § 679.21(e)(1)(i) resulting from Amendment 80 will become § 679.21(e)(3)(i)(A) under this action, with changes made to reflect the new cross-references. Second, the new regulatory text at § 679.21(e)(3)(i) resulting from Amendment 80 will become § 679.21(e)(3)(i)(B) under this action, with a heading added to the paragraph. Last, an instruction will be inserted to prevent the deletion of a new paragraph added at § 679.21(e)(3)(vi) by the Amendment 80 final rule.

**Classification**

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator of Fisheries finds good cause to waive prior notice and opportunity for public comment otherwise required by the section. NOAA finds that prior notice and opportunity for public comment are unnecessary because the editorial changes made by this rule are non-substantive. Neither Amendment 85 nor Amendment 80 intended to remove regulations allocating a portion of the trawl gear PSC limits to the CDQ Program. This action will preserve regulatory language approved in the Amendment 80 final rule when the regulations approved under the Amendment 85 final rule become effective.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

**Correction**

Accordingly, the final rule, FR Doc. E7-17140, published on September 4,

2007, at 72 FR 50788, to be effective January 1, 2008, is corrected as follows:

**§ 679.21 [Corrected]**

1. In § 679.21, on page 50817, columns 1 and 2, revise paragraphs (e)(3)(i)(A) and (B) to read as set forth below and in column 2, add five asterisks in between paragraphs (e)(3)(v) and (e)(4) to account for text not being amended.

**§ 679.21 Prohibited species bycatch arrangement.**

\* \* \* \* \*

- (e) \* \* \*
- (3) \* \* \*
- (i) \* \* \*

(A) *PSQ reserve*. The following allocations of the trawl gear PSC limits are made to the CDQ Program as PSQ reserves. The PSQ reserves are not apportioned by gear or fishery.

(1) *Crab PSQ*. 10.7 percent of each PSC limit set forth in paragraphs (e)(1)(i) through (iii) of this section.

(2) *Halibut PSQ*. (i) 276 mt of the total PSC limit set forth in paragraph (e)(1)(iv) of this section in each year for 2008 and 2009.

(ii) 326 mt of the total PSC limit set forth in paragraph (e)(1)(iv) of this section effective in 2010 and each year thereafter.

(3) *Salmon PSQ*—(i) *Chinook salmon*. 7.5 percent of the PSC limit set forth in paragraph (e)(1)(vi) of this section.

(ii) *Non-Chinook salmon*. 10.7 percent of the PSC limit set forth in paragraph (e)(1)(vii) of this section.

(B) *Fishery categories*. NMFS, after consultation with the Council and after subtraction of PSQ reserves and PSC CQ assigned to Amendment 80 cooperatives, will apportion each PSC limit set forth in paragraphs (e)(1)(i) through (vii) of this section into bycatch allowances for fishery categories defined in paragraph (e)(3)(iv) of this section, based on each category’s proportional share of the anticipated incidental catch during a fishing year of prohibited species for which a PSC limit is specified and the need to optimize the amount of total groundfish harvested under established PSC limits.

\* \* \* \* \*

Dated: October 19, 2007.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.*

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