

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

#### **§ 218.17 Renewal of Letters of Authorization.**

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.16 for the activity identified in § 218.10(c) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.15 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under § 218.14(b); and

(3) A determination by the NMFS that the mitigation, monitoring and reporting measures required under § 218.13 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.16, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under § 216.106 of this chapter and § 218.17 indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, the NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register**.

#### **§ 218.18 Modifications to Letters of Authorization.**

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to § 216.106 of this chapter and § 218.16 and subject to the provisions of this subpart shall be made

until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 218.17, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 218.10(b), a Letter of Authorization issued pursuant to § 216.106 of this chapter and § 218.16 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 679**

#### **RIN 0648-AX25**

### **Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands and Gulf of Alaska Groundfish; Limited Access Privilege Programs**

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

**ACTION:** Notice of availability of fishery management plan amendments; request for comments.

**SUMMARY:** Amendment 90 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and Amendment 78 to the Fishery Management Plan for Groundfish of the Gulf of Alaska would modify the Fishery Management Plans (FMPs) to allow unlimited post-delivery transfers of cooperative quota. This action is necessary to mitigate potential overages, reduce enforcement costs, and provide for more precise total allowable catch management. This action is intended to promote the goals and objectives of the Magnuson-Stevens Act, the FMPs, and other applicable laws.

**DATES:** Comments on the amendment must be submitted on or before February 17, 2009.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional

Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by "RIN 0648-AX25," by any one of the following methods:

• **Electronic Submissions:** Submit all electronic public comments via the FedereleRulemaking Portal website at <http://www.regulations.gov>.

• **Mail:** P. O. Box 21668, Juneau, AK 99802.

• **Fax:** (907) 586-7557.

• **Hand delivery to the Federal Building:** 709 West 9<sup>th</sup> Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of Amendments 90 and 78, the Regulatory Impact Review/Initial Regulatory Flexibility Analyses (RIR/IRFAs) for this action, and the Categorical Exclusion prepared for the amendments may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region website at <http://alaskafisheries.noaa.gov>. The proposed rule to implement Amendments 90 and 78 to the FMPs was categorically excluded from the need to prepare an environmental assessment under the National Environmental Policy Act.

**FOR FURTHER INFORMATION CONTACT:** Glenn Merrill, 907-586-7459, or Julie Scheurer, 907-586-7356.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Act requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. This notice announces that proposed Amendment 90 to the Fishery Management Plan for

Groundfish of the Bering Sea and Aleutian Islands Management Area and proposed Amendment 78 to the Fishery Management Plan for Groundfish of the Gulf of Alaska are available for public review and comment.

Amendments 90 and 78 would make minor changes to the FMPs to allow unlimited transfers of cooperative quota (CQ) in the Bering Sea and Aleutian Islands Management Area (BSAI) Amendment 80 Program and the Central Gulf of Alaska Rockfish Program (Rockfish Program) to cover harvesting overages. These two programs are commonly known as limited access privilege programs because the participants in these fisheries may receive exclusive access to fishery resources if specific conditions are met.

Under the Amendment 80 Program, NMFS issued quota share (QS) to persons based on their qualifying harvest histories using specific trawl catcher/processor vessels in six BSAI non-pollock groundfish fisheries during 1998 through 2004. Under the Rockfish Program, NMFS issued QS to persons based on their qualifying harvest histories using trawl catcher vessel and trawl catcher/processors in several Central Gulf of Alaska rockfish fisheries and associated species that are harvested during those rockfish fisheries based during 1996 through 2002. Each year, the person issued QS may choose to participate in a competitive limited access fishery with all other non-cooperative participants who hold QS, or may participate in a fishery cooperative with other QS holders.

The total amount of QS assigned to all members of a cooperative yields cooperative quota (CQ), an exclusive annual harvest privilege in specific fisheries. In addition, a cooperative also receives CQ that may be used for the incidental catch of a specific amount crab or halibut. Incidentally caught crab or halibut cannot be retained, processed, or sold, and are commonly called prohibited species catch (PSC).

The Amendment 80 Program and the Rockfish Program allow cooperatives to transfer their unused CQ among cooperatives. Transfers allow cooperatives to tailor their operations to specific harvesting conditions. All transfers must be approved by NMFS before they become effective. Under existing regulations, a cooperative in either the Amendment 80 Program or the Rockfish Program is prohibited from catching groundfish or PSC that exceeds the amount of CQ that is issued to that cooperative. This prohibits a cooperative and its members from having a negative CQ balance for a given species, and subsequently transferring CQ from another cooperative to rectify a negative CQ balance. A transfer of CQ after fish have been landed is commonly known as a post-delivery transfer.

If a harvester catches more groundfish or PSC CQ than the amount of CQ that the cooperative holds, that cooperative has violated existing regulations, commonly known as an overage. Overages can occur either through deliberate actions, or more commonly through unintentional errors. Generally, smaller overages are subject to forfeiture of the overage, with larger or repeat violations subject to additional penalties at the discretion of NOAA Office for Law Enforcement.

Amendments 90 and 78, if approved, would allow post-delivery transfers to cover overages of CQ. There would be no limit on the size of a post-delivery transfer nor on the number of post-delivery transfers a cooperative could undertake. However, a harvester who has assigned his vessel to a cooperative would be prohibited from beginning a new fishing trip if the CQ account for any groundfish or PSC species assigned to a cooperative was zero or negative. A cooperative would be prohibited from having a negative balance in its CQ account after the end of a calendar year. The Council recommended Amendments 90 and 78 to the FMPs to improve the fleet's flexibility, reduce

the potential number of violations for overages, reduce enforcement costs, and allow more complete harvest of allocations.

The RIR/IRFAs prepared for this action describes in detail the costs and benefits of the proposed amendment (see **ADDRESSES** for availability). All of the directly regulated entities would be expected to benefit from this action relative to the status quo because the proposed amendment would allow greater flexibility and a longer time period over which to account for overages.

Public comments are being solicited on proposed Amendments 90 and 78 through the end of the comment period (see **DATES**). NMFS intends to publish in the **Federal Register** and seek public comment on a proposed rule that would implement Amendments 90 and 78, following NMFS( evaluation of the proposed rule under the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on Amendments 90 and 78 to be considered in the approval/disapproval decision on Amendments 90 and 78. All comments received by the end of the comment period on Amendments 90 and 78, whether specifically directed to the FMP amendments or the proposed rule, will be considered in the decision to approve or disapprove the amendments. Comments received after that date will not be considered in the decision on the amendments. To be considered, comments must be received, not just postmarked or otherwise transmitted, by the close of business on the last day of the comment period.

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

Dated: December 11, 2008.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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