

date for filing an answer to the complaint or compliance specification, whichever is applicable, the motion shall be filed promptly. Any opposition to the motion shall be filed within 14 days after the service of the motion for summary judgment on the opposing party. It is not required that the opposition be supported by affidavits or other documentary evidence showing that there is a genuine issue for hearing. The Board in its discretion may deny the motion where the motion itself fails to establish the absence of a genuine issue, or where the opposing party's pleadings and/or opposition indicate on their face that a genuine issue may exist. If the opposing party files no opposition, the Board may treat the motion as conceded, and summary judgment or dismissal, if appropriate, shall be entered. The hearing shall not be automatically postponed upon filing of the motion for summary judgment. It shall be the responsibility of the party filing the motion to postpone the hearing (if the General Counsel files the motion for summary judgment, subject to the provisions of § 102.16 of the Board's rules and regulations) or to file a request for a postponement with the Regional Director, administrative law judge, and/or the Board (if the respondent or charging party files the motion).

#### **§ 102.98 [Amended]**

3. In § 102.98, paragraph (a) and the paragraph designation (b) are removed.

#### **§ 102.99 [Amended]**

4. In § 102.99, paragraph (a) is removed and paragraphs (b) and (c) are redesignated as paragraphs (a) and (b) respectively.

Dated, Washington, DC, June 28, 1996.

By direction of the Board:

John J. Toner,

*Executive Secretary.*

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## **DEPARTMENT OF COMMERCE**

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

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

[I.D. 062596B]

RIN 0648-AH68

### **Groundfish of the Gulf of Alaska; Pacific Ocean Perch; Amendment 38**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The North Pacific Fishery Management Council (Council) has submitted Amendment 38 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) for Secretarial review. Amendment 38 would provide the flexibility for the Council to recommend a total allowable catch amount for Pacific ocean perch (POP) below the level currently established in the FMP. NMFS is requesting comments from the public on the proposed amendment. Copies of the amendment may be obtained from the Council (see **ADDRESSES**).

**DATES:** Comments on the FMP amendment should be submitted on or before August 30, 1996.

**ADDRESSES:** Comments on the FMP amendment should be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668; Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK.

Copies of Amendment 38 and the environmental assessment and the economic analysis prepared for the amendment are available from the North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501-2252; telephone: 907-271-2809.

**FOR FURTHER INFORMATION CONTACT:** Kaja Brix, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving a fishery management plan or amendment, immediately publish a notice that the fishery management plan or amendment is available for public review and comment. The Secretary will consider the public comments received during the comment period in determining whether to approve the FMP or amendment.

Decline of the POP stock since the early period of the foreign fishery (mid 1960's) prompted the Council to recommend a rebuilding plan for POP. The Pacific Ocean Perch Rebuilding Plan (Rebuilding Plan) was established in Amendment 32 to the FMP. Details

of the justification for the Rebuilding Plan can be found in the Notice of Availability for Amendment 32 (59 FR 295; January 4, 1994). The POP Rebuilding Plan provides a specific rebuilding strategy for POP stocks, based on available biological and economic information. The Rebuilding Plan establishes a formula to determine annually the POP TAC, which is then apportioned among Gulf of Alaska (GOA) regulatory areas based on biomass distribution. However, the amendment does not provide for any flexibility to reduce the TAC below the amount specified by the formula.

Under the current Rebuilding Plan, the potential exists for the calculated TAC to be greater than the acceptable biological catch (ABC), which would be inconsistent with the current management practice for other groundfish stocks. The Council has also expressed concern that it does not have the flexibility to lower the POP TAC under the Rebuilding Plan to accommodate other resource conservation concerns. Therefore, the Council adopted Amendment 38 to the FMP at its December 1995 meeting. Amendment 38 would not prescribe a TAC lower than that specified by the formula; however, it would allow the Council the flexibility to recommend a TAC below the level of the specified formula in one or more GOA regulatory areas or districts. To be consistent with the Rebuilding Plan for POP, any downward adjustment of TAC would be based on biological or resource conservation concerns.

Under the Rebuilding Plan, an ABC is set for POP in the GOA and this ABC is apportioned among regulatory areas based on biomass distribution. The TAC is determined using the formula and is then apportioned to each regulatory area according to the percentage biomass distribution used for the ABC apportionment.

Under Amendment 38, once the TAC is apportioned among regulatory areas, as specified by the current FMP, the Council could recommend a further downward adjustment of the POP TAC in one or more of the GOA regulatory areas or districts. Any downward adjustments would be based on biological or resource conservation concerns about the POP resource or associated with the POP fishery that are not accounted for in the Rebuilding Plan or the annual Stock Assessment and Fishery Evaluation (SAFE) reports, or to maintain the TAC below the ABC. NMFS will consider information provided by a recognized scientific body such as the Council's Scientific and Statistical Committee, Plan Team, or by

NMFS stock assessment scientists regarding any downward adjustment of the TAC.

The FMP amendment would only give the Council the alternative of recommending a lower POP TAC in the annual specifications process to address biological or resource conservation concerns that are not addressed under the Rebuilding Plan or SAFE reports. If socioeconomic concerns exist with respect to the management of the POP fishery, particularly in the Eastern GOA, the Council would need to consider a separate amendment to address these issues.

Amendment 38 is intended to improve conservation and management of POP and to further the goals and objectives of the FMP. No regulatory changes are necessary to implement this FMP amendment. The TAC would be considered for implementation during the annual specification process under regulations at § 679.20(c).

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

Dated: June 27, 1996.

Richard W. Surdi,

*Acting Director, Office of Fisheries  
Conservation and Management, National  
Marine Fisheries Service.*

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