

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 101498C]

RIN 0648-AJ50

Fisheries of the Exclusive Economic Zone off Alaska; Amendment 56 to the Fishery Management Plan for Groundfish of the Gulf of Alaska and Amendment 56 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area

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 56 to the Fishery Management Plan for Groundfish of the Gulf of Alaska and Amendment 56 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs). These amendments would revise the definition of overfishing levels (OFL) for groundfish species or species groups in the FMPs. This action is necessary to revise the definition of OFL for consistency with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and is intended to advance the Council's ability to achieve, on a continuing basis, the optimum yield from fisheries under its authority. NMFS is requesting comments from the public on the proposed amendments, copies of which may be obtained from the Council (See **ADDRESSES**).

DATES: Comments on Amendments 56/56 must be submitted by December 28, 1998.

ADDRESSES: Comments on the proposed amendments should be submitted to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska, 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of Amendments 56/56 and the Environmental Assessment prepared for the proposed amendments are available from the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501-2252; telephone 907-271-2809.

FOR FURTHER INFORMATION CONTACT:

James Hale, 907-586-7228.

SUPPLEMENTARY INFORMATION:**Background**

The Magnuson-Stevens Act requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, after receiving a fishery management plan or amendment, immediately publish a notice in the **Federal Register** that the fishery management plan or amendment is available for public review and comment. This action constitutes such notice for Amendments 56/56 to the FMPs. NMFS will consider the public comments received during the comment period in determining whether to approve, disapprove, or partially approve these amendments.

Section 301(a) of the Magnuson-Stevens Act establishes national standards for fishery conservation and management. All fishery management plans must be consistent with those standards for approval by NMFS. National standard 1 requires conservation and management measures to "prevent overfishing while achieving, on a continuing basis, the optimum yield" from fisheries in Federal waters. National Standard 2 requires further that conservation and management measures be based on the best scientific information available.

Prior to its amendment in 1996, the Magnuson-Stevens Act did not define overfishing. Advisory national standard guidelines for the development of fishery management plans and amendments, pursuant to section 301(b) of the Magnuson-Stevens Act and codified at 50 CFR part 600, required that each fishery management plan specify an objective and measurable definition of overfishing for each managed stock or stock complex. The guidelines further required that an overfishing definition (1) have sufficient scientific merit, (2) be likely to protect the stock from closely approaching or reaching an overfished status, (3) provide a basis for objective measurement of the status of the stock against the definition, and (4) be operationally feasible. The Council developed such an objective and measurable definition of overfishing and, in 1991, implemented that definition under Amendments 16 and 21 to the FMPs (56 FR 2700, January 24, 1991).

In 1996, with increased understanding of the reference fishing

mortality rates used to determine Acceptable Biological Catches (ABCs) and OFLs, the Council recommended, and NMFS approved, the existing definition of overfishing: A 6-tiered system accommodating different levels of reliable information available to fishery scientists for determining OFLs. Fishery scientists use the equations from an appropriate tier to determine when a stock is overfished according to the reliability of information available. The 6-tiered system accomplishes three basic functions: (1) It compensates for uncertainty in estimating fishing mortality rates at a level of maximum sustainable yield (MSY) by establishing fishing mortality rates more conservatively as biological parameters become more imprecise; (2) it relates fishing mortality rates directly to biomass for stocks below target abundance levels, so that fishing mortality rates fall to zero should a stock become critically depleted; and (3) it maintains a buffer between ABC and the overfishing level. Further information and background on the OFL definition contained in Amendments 44/44 may be found in the Notice of Availability published at 61 FR 54145 on October 17, 1996.

Revised Definition of OFL

On October 11, 1996, the President signed into law the Sustainable Fisheries Act (Public Law 104-297), which made numerous amendments to the Magnuson-Stevens Act. The amended Magnuson-Stevens Act now defines the terms "overfishing" and "overfished" to mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield (MSY) on a continuing basis (§ 3(29)), and requires that all fishery management plans:

"Specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing and rebuild the fishery" (§ 303 (a)(10)).

The Magnuson-Stevens Act further requires Regional Fishery Management Councils to submit amendments, by October 11, 1998, that would bring fishery management plans into compliance.

In April 1998, the Council and its Advisory Panel and Scientific and Statistical Committee (SSC) reviewed a draft analysis of alternatives for revising

the existing OFL definitions. On May 1, 1998, NMFS published revised advisory national standard guidelines to assist Regional Fishery Management Councils in updating FMPs for consistency with this definition of overfishing and with other provisions of the amended Magnuson-Stevens Act. In June 1998, the Council recommended the present proposed amendments to the FMPs.

The Magnuson-Stevens Act and the revised guidelines constitute a significant policy shift in the treatment of MSY. MSY represents the largest long-term average catch or yield that can be taken from a stock or stock complex under prevailing ecological and environmental conditions. The guidelines indicate that MSY, treated as a target strategy under the current FMP definition of overfishing, should represent a limit rather than a target. This means that "limit" harvest strategies (such as the rules used to specify OFL) should result in a long-term average catch that approximates MSY, and that "target" harvest strategies (such as the rules used to specify ABC) should result in catches that are substantially more conservative than the limit. Because tiers 2–4 of the current FMP definition of overfishing could be interpreted as treating MSY as a target rather than as a limit, Amendments 56/56 would revise tiers 2–4 as follows.

Tiers 2–4 currently depend on reliable point estimates of certain fishing mortality rates designated as $F_{30\%}$ and $F_{40\%}$ —rates of fishing that reduce the amount of spawning contributed by an average fish over the course of its lifetime to 30 percent and 40 percent, respectively, of the amount that would be contributed in the absence of fishing. $F_{30\%}$ represents a fishing rate arrived at by scientists and used by fisheries managers in the recent past to serve as a warning point that the MSY rate has probably already been exceeded and that any further increase in the rate of fishing could lead to overfishing. Amendments 56/56 would revise the

default value from $F_{30\%}$ to the more conservative estimate of $F_{35\%}$. Tier 2 currently sets the OFL rate equal to MSY inflated by a ratio of the fishing mortality rates of $F_{30\%}$ to $F_{40\%}$ and sets the target ABC rate at less than or equal to the MSY rate. This tier is proposed to be revised to set the OFL limit equal to the MSY rate and set the ABC rate at less than or equal to MSY reduced by the ratio of fishing mortality rates $F_{40\%}$ to $F_{35\%}$.

The advisory guidelines interpret the new statutory definition of overfishing by determining a stock to be overfished whenever it falls below a "minimum stock size threshold" (MSST). The MSST is defined, in part, on the basis of a stock's ability to rebuild within 10 years if fished at the maximum allowable level (i.e., if catch were to equal the OFL in each of the next 10 years). This approach provides additional protection for the environment by assuring that remedial action is taken when stock size falls below the MSY level.

However, the Council and its SSC found that specification of an MSST does not seem warranted in the case of Gulf of Alaska and Bering Sea and Aleutian Islands groundfish. The Council's approach of using a biomass-based policy that reduces fishing mortality as stocks decrease in size was selected to provide for automatic rebuilding. The principal requirement for a stock that falls below its MSST is that it be harvested with a strategy designed to rebuild it within the statutory time frame of 10 years. Given the SSC's belief that the current stock assessment approach is sufficient to assure that harvest levels provide for rebuilding within 10 years, the Council and the SSC viewed the specification of an MSST as unnecessary. Thus, assuming that the SSC is correct in its finding that the current approach automatically assures sufficient rebuilding within 10 years, specification of an MSST in the FMPs would not be necessary.

The Director of the Alaska Fisheries Science Center, NMFS, (Director) has certified, with reservations, that the proposed definition of overfishing complies with the provisions of the guidelines at 50 CFR 600.310(d)(5) that an overfishing definition (1) have sufficient scientific merit, (2) contain the criteria for specification of stock status determination provided in 50 CFR 600.310(d)(2), (3) provide a basis for objective measurement of the status of the stock against the criteria, and (4) be operationally feasible.

This proposed overfishing definition is fundamentally the same as that implemented by Amendments 44/44 to the FMPs; the scientific merit, operational feasibility, and provision for objective measurement remain unchanged. Hence, the rationale for the Director's certification under criteria (1), (3), and (4) above remains the same as discussed in the Notice of Availability for Amendments 44/44 published at 61 FR 54145 on October 17, 1996.

The reason that the proposed amendments are certified with reservations is that the proposed overfishing definition lacks the MSST specified by 50 CFR 600.310(d)(2), but satisfies the intent of the MSST with features that accomplish the same objective. Specifically, the proposed definition would automatically reduce the fishing mortality rate for any stocks that fall below reference abundance levels whenever such levels can be estimated. Thus, the proposed definition prevents overfishing and ensures that stocks rebuild to those reference levels in a conservative fashion. This proposed action contains no implementing regulations.

Dated: October 20, 1998.

Gary C. Matlock,

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

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